UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRIAN BURKE,

Plaintiff,

- against -

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

Defendants.

-- x

DECLARATION IN SUPPORT OF MOTION TO DISMISS

Docket No. 15 CV 1481 (ENV)(LB)

I, DANIEL CHIU, hereby declare pursuant to 28 U.S.C. § 1746 that:

1. I am an Executive Agency Counsel with the office of James B. Henly, Vice-President and General Counsel, New York City Transit Authority, attorney for defendants New York City Transit Authority ("NYCT"), Kristen Nolan, and Leonard Akselrod. I am familiar with the matters set forth below based on a review of the case file maintained by this office and conversations with employees of defendant NYCT.

2. This declaration is submitted in support of defendants' motion to dismiss the Second Amended Complaint.

3. Annexed hereto as Exhibit "A" is a true copy of the Second Amended Complaint, dated October 24, 2016.

4. Annexed hereto as Exhibit "B" is a true copy of an On the Job Injury Form, dated April 17, 2014.

5. Annexed hereto as Exhibit "C" is a true copy of a Notice of Intent to Terminate, Eligibility for Reclassification letter, dated January 20, 2015.

6. Annexed hereto as Exhibit "D" is a true copy of Reclassification Consideration Requests, dated March 11, and 13, 2015.

7. Annexed hereto as Exhibit "E" is a true copy of an On the Job Injury Form, dated April 6, 2015.

8. Annexed hereto as Exhibit "F" is a true copy of a letter from Monica F. DaCosta to Brian Burke, dated May 5, 2016.

9. Annexed hereto as Exhibit "G" is a true copy of a Board Decision and Order, dated July 13, 2016, from the State of New York Public Employment Relations Board.

10. Annexed hereto as Exhibit "H" is a true copy of a Decision, dated January 6, 2017, from the City of New York Civil Service Commission.

11. Annexed hereto as Exhibit "I" is a true copy of a Workers Compensation Board Complaint pursuant to § 120 of the Workers' Compensation Law.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
March 3, 2017

Daniel Chiu

Exhibit A

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Brian Burke, *Pro Per*
145 EAST 23RD STREET APT. 4R
NEW YORK, NY 10010
646-434-8513
BRIANTBURKE@GMAIL.COM

Recv'd 10/28/16
FILED
2016 OCT 24 PM 9:35
CLERK
U.S. DISTRICT COURT
E.D.N.Y.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

BRIAN BURKE, Plaintiff, vs. NEW YORK CITY TRANSIT AUTHORITY, JOHN/JANE DOE, *ET AL.*, Defendants	Case# 15-cv-1481(ENV)(LB) SECOND AMENDED COMPLAINT AND AFFIRMATION JURY TRIAL DEMAND

INTRODUCTION

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct. Executed on MONDAY, OCTOBER 24, 2016 /S/:

This is an action to remedy the rights of Brian Burke, a 15 year employee of New York City Transit Authority, "with respect to his discrimination and retaliation claims, excluding claims that are time-barred or otherwise cannot be properly pleaded as outlined in this Memorandum & Order." Please see Order of September 21, 2016, filed on September 23rd 2016. Please see also this case law "Additional considerations apply in the context of employment discrimination claims. "Ultimately, the plaintiff will be required to prove that the employer-defendant acted with discriminatory motivation. However, in the first *phase of the case, the prima facie requirements are* relaxed." *Littlejohn*, 795 F.3d at 306 (analyzing a line of Supreme Court precedent from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), to *Iqbal*, 556 U.S. 662). "[A]t the pleadings stage…, a plaintiff has a 'minimal burden' of alleging facts 'suggesting an inference of discriminatory motivation.'" *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 84 (2d Cir. 2015) (quoting *Littlejohn*, 795 F.3d at 310). In sum, the allegations in the complaint "need not give plausible support to the ultimate question of whether the adverse employment action was attributable to discrimination.

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They need only give plausible support to a minimal inference of discriminatory motivation." *Littlejohn,* 795 F.3d at 311. This burden-shifting framework applies to Plaintiff's claims of employment discrimination under both Title VII and Section 1983. Id. at 312 (citing *Ruiz v. Cnty. of Rockland,* 609 F.3d 486, 491 (2d Cir. 2010))." And ""To establish a hostile work environment under Title VII,…a plaintiff must show that '*the workplace is permeated with discriminatory* intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Littlejohn,* 795 F.3d at 320-21 (quoting *Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 21 (1993)). "The incidents complained of must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." *Littlejohn,* 795 F.3d at 321 (quoting *Raspardo v. Carlone,* 770 F.3d 97, 114 (2d Cir. 2014)).

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For this type of claim, the boundaries of the time window may be relaxed somewhat under the "continuing violation" doctrine: "[W]ith respect to hostile work environment claims, consideration is given to 'behavior alleged outside the statutory time period, so long as [at least one] act contributing to that hostile environment takes place within the statutory time period.'" *Orlando v. Dep't of Transp., Comm'r*, 459 F. App'x 8, 9-10 (2d Cir. 2012) (alterations omitted)(quoting *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 105 (2002)); see also *Washington v. Cty. of Rockland*, 373 F.3d 310, 318 (2d Cir. 2004) ("Conduct that has been characterized as a continuing violation is 'composed of a series of separate acts that collectively constitute one unlawful employment practice.'" (quoting *Morgan*. 536 U.S. at 111)). See *Rojas v. Port Auth. of N.Y.*, 15-CV-6185, NYLJ 1202769905749, at *1 (EDNY, Decided October 7, 2016)

Under *42 U.S.C. §§ 1983, 1985, 1986, Title IV and VII, ADA, the Equal Protection and Due Process Clause of the 14th Amendment, the Due Process and Taking Clause of the 5th Amendment, the 13th Amendment, the 4th Amendment, NYC Personnel Rules and Regulations 5.2, New York Wage Theft Prevention Act (WTPA), Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL)*[1]*, Wire and Mail Fraud, Workers Compensation Fraud, Unemployment Insurance Fraud, Perjury, Subornation of Perjury, Obstruction of Justice* and all other applicable New York State or Federal Statutes or common law, subject to amendment. Malicious, concerted, terroristic, dangerous, unlawful activity, orchestrated by the NYCTA Department of Law, resulting in a hostile workplace and a PTSD, mixed anxiety depression disorder

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[1] *Cao*, 2010 WL 4159391, at *5 ("Under the FLSA, liquidated damages are compensatory, rather than punitive … . In contrast, liquidated damages under the Labor Law are punitive 'to deter an employer's willful withholding of wages due.' … . Because liquidated damages under the FLSA and the Labor Law serve fundamentally different purposes, a plaintiff may recover liquidated damages under both the FLSA and the Labor Law.") (citations omitted).

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diagnosis, for reasons primarily of retaliation, makes this suit necessary.

JURISDICTION & VENUE

This Court has Jurisdiction pursuant to the following Statutes; 28 U.S.C. *§ 1331, 28 U.S.C. § 1343* and *28 U.S.C. § 1367*. Venue is appropriate in this judicial district as the events that gave rise to this Complaint occurred in this district.

JURY DEMAND

A jury trial is demanded under the Seventh Amendment to the Constitution of the United States and Fed. R. Civ. P. 38.

PARTIES

Plaintiff is a 55 year old citizen of the United States, 14 year Train Operator for the New York City Transit Authority (hereon in NYCTA). He has resided in New York County, New York for over a quarter century, has never been arrested or charged with any crime and has been regularly and randomly drug and alcohol tested as recently as 03/11/2015.

Qui facit per alium facit per se

NYCTA is the employer at issue. All individuals, yet known and unknown, involved in the unlawful concerted adverse job actions work for the same. NYCTA is a public entity pursuant to 42 U.S.C *§12131, etc.* NYCTA resides at 130 Livingston Street, Brooklyn New York, within this Court's Jurisdiction. NYCTA receives federal funds.

NYCTA, *via an unnamed "Transit Source" (i.e. Kristen* Nolan, *esq.)*published a maliciously false, defamatory, libelous, slanderous, damaging hit piece on Sunday, March 29, 2015 about this case, and others, in order to potentially obstruct justice and falsely influence a prospective jury and otherwise harm Petitioner. This resulted in a substantiated injury claim for stress in front of ALJ Patricia Harris, who concluded the article was defamatory, i.e. Collateral Estoppel. This claim remains unpaid one year later, additional retaliation.

DEPRAVATION OF RIGHTS UNDER COLOR OF LAW

1. On February 26, 2001, Petitioner was hired as a safety sensitive Train Operator by the New York City Transit Authority, off an open competitive civil service list, scoring 97.5 out of 100 and passing all requirements. Plaintiff noticed the NYCTA medical department of the pre-existing conditions of myopia and photophobia and supplied medical documentation of the same, as per rule[2]. Petitioner has been required since to wear the correct corrective lenses while operating a train and has done so since hiring date.

2. In 2005 Complainant became a Shop Steward for Transport Workers Union, Local 100 and

[2] Rule 11(o)"Any employee who requires tinted eyeglass lenses for medical reasons, must submit a certificate from his/her physician or eye specialist and must report to the Occupational Health Services, with the tinted eyeglasses, and must submit to an eye examination." This was complied with in March 2001 by submitting a certificate by the head of the Department of Opthalmology at Beth Israel Medical Center, C. Michael Samson, M.D.

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in 2009 was elected a Delegate and appointed a contractual Safety Representative in 2010.

3. In 2008 Plaintiff filed U-28203 with the New York State Public Employment Relations Board against NYCTA, due to unsafe, harassing, distracting activity by Train Service Supervisor (hereon in TSS) LoBianco.

4. Approximately once a month TSS LoBianco, *Petitioners assigned* TSS[3], *would enter the* operating cab and proceed to harass, threaten, mock, interfere and distract Train Operator Brian Burke while train was in motion. This was also reported to Transit and Federal EEOC.

5. Ms. Kristen Nolan, *esq.* was Counsel for the Authority at the PERB settlement in 2008. Ms. Nolan became aware of Complainant's corrective lens requirement at that time.

[3] All hourly workers in Rapid Transit Operations are assigned to a TSS each pick, i.e. twice yearly and each TSS has approximately 30 assignees. The assigned TSS performs all investigations of assignees.

6. At the 2008 settlement hearing ALJ Philip Meier negotiated a written settlement agreement between NYCTA General Counsel Martin B. Schnabel, Kristen Nolan and Complainant. The harassment by TSS LoBianco ceased.

7. In 2011 in Concourse Yard, Bronx, Petitioner was the witness to a confrontation between *Train Operator Estes, a proud African-*American Air Force Veteran, and TO Daniel C. of Irish-Catholic ethnicity.

8. Plaintiff was ordered by then Line Superintendent O'Toole to write a written report on the event.

9. Various employees suggested Petitioner lie and cover-up malfeasance by TO Daniel C., presumably to have Complainant avoid harassment, hostility and adverse job actions to come, but this was not done. TO Daniel C. was forced to retire.

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10. After writing correct EEOC document and supporting TO Estes version of events adverse job actions in assignments started occurring on a daily basis.

11. For 10 years at that point, Complainant picked the 'extra list'.[4] As retaliation, the Authority started assigning only less senior road jobs to, now senior on the list, TO Burke. A *grievance was filed and* Complainant was forced to pick off the list.

12. In August 2012, in order to cease adverse job assignments, Petitioner accepted a promotion to Train Dispatcher.

13. As Train Dispatcher, Petitioner discovered that he would be getting lower pay than as a Motorman and would be on an illegal 2 year

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[4] Specifically extra list north, PM shift. This was done so Petitioner could work more senior jobs, such as yard and switching, that are normally worked by more senior employees.

probation[5]. Petition requested as of right voluntary demotion to previous Civil Service title.

14. Petitioner resumed newly picked B-line road job, which started in Concourse Yard, in December 2012.

15. On first day back and for the next six months Assistant Train Dispatcher Odums *proceeded to harass Complainant at every* sign in. Some, but not all, of this harassment was recorded.

16. All hourly (Train Operators, Conductors, Tower Operators) RTO NYCTA employees are required to read bulletins, memoranda, notices, general orders and transit related news items[6] for the first 15 minutes of

[5] The NYCTA, in violation of NYS Civil Service Law and promotion letter sent to Complainant, insisted on unlawful two year probation.

[6] These would, and did, include the 03/29/15 Post article, also available online at MTA Today, a widely read employee only intranet.

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every tour, i.e. 'bulletin time', at sign in location where the same are posted.

17. On first day back ATD Odums denied pay to return a transit radio, while ordering work to be performed free and was extremely hostile and harassing.

18. In 2013 ATD Odums harassment, retaliation and hostility only increased.

19. *Complainant, as a Safety Representative,* attempted to and did in fact call Vice President Kevin Harrington of Local 100 to report a grave unsafe condition in Concourse Yard Barn[7]. ATD Odums interrupted call for no legitimate reason and ordered plaintiff to never use transit phones for any purpose[8].

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[7] Complainant, while walking to his train, observed the safety chains that chock the trains in the barn were unpainted, i.e. camouflage, and would, if missed, derail train. This is a violation of Bulletin and wildly unsafe. It was successfully reported and remedied much later.

[8] Petitioner, had recently completed all training for a higher title, Train Dispatcher, and knew ATD Odums had no legal

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20. On other occasions ordered Plaintiff to not stand in front of desk to sign in, an impossibility.

21. Petitioner was uniquely told he could not use NYCTA microwave by Mr. Odums.

22. Same for NYCTA toaster by ATD Odums.

23. Uniquely ordered not to use NYCTA refrigerator at sign in location, by Mr. *Odums*.

24. Blocked from talking to Local 100 Tower Operator, in violation of first amendment and "Taylor Law", by Mr. Odums.

25. Told he could not sit in NYCTA chairs when reading Bulletins, etc., by Mr. Odums.

26. On 02/13/2013 (Ash Wednesday) Complainant arrived at work after mass with a cross of ashes on his forehead. ATD Odums made a number of rude and racist comments directed at Petitioner, including comparison with a

right to order that, nevertheless followed the motto "comply and grieve".

hindu woman and a rant on Catholics violating his same-sex rights.

27. Blocked from using NYCTA cups to drink water by ATD Odums.

28. Blocked from being able to drink NYCTA water by ATD Odums.

29. Told his face looked like a woman had a yeast discharge on it by ATD Odums.

30. *Other statements too inflammatory to print.*

31. Petitioner filled new PERB (U-32637)and NYS Human Rights cases against NYCTA under Vicarious Liability Doctrine.

32. Kristen Nolan, esq. filed three perjurious sworn Affidavits purportedly signed by ATD Odums.

33. Petitioner filed a Notice of Claim in 2012 against the NYCTA.

34. Ms. Nolan sent a request for a Statutory Hearing (deposition) under NY Code 50-h by certified letter, as required.

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35. Originally scheduled for September 25, 2012, it took place on February 27, 2013 at 1pm. Ms. Nolan questioned Complainant for the rest of the afternoon and was again made aware of corrective lens need. No copy of transcript was to this day given to Deponent, in violation of NY Code 50-h.

36. Petitioner, in order to stop brutal *harassment by ATD Odums, was required to,* and did in fact 'pick off' the B line and picked a job with more cab time and an otherwise more difficult schedule. That harassment ended in June 2013 only because Mr. Odums had no more access to do so.

37. Appearing at PERB settlement hearing at 55 Hanson Place, in front of ALJ Angela Blassman in November 2013, Ms. Nolan was again made aware of petitioners corrective lens requirements.

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38. After returning to work as a Train Operator in December 2012, the Authority continued to deduct dues for the supervisors union for months.

39. After returning to T/O title the Authority refused to deduct TWU Local 100 dues, in violation of contract, state law and automatic dues check off stipulation/Court *Order, for years. This was done to place* Complainant in bad standing with Union.

40. On January 17, 2013, Leonard Akselrod, head of Labor Relations, turned off, without notice, Petitioners employee pass. Nevertheless, Mr. Akselrod ordered Burke to do job without proper means in violation of contract and safety. A 'Safety Dispute Resolution Form' was requested of Mr. Akselrod, who did not comply in violation of Bulletins, NYCTA Rules, etc.. Mr. Akselrod is tasked with enforcing said rules and

fires employees daily for less severe violations.

41. On March 27, 2014 a PERB hearing for U-32637 took place. ATD Odums testified, and it was clear, additionally perjured himself. Ms. Nolan was present and again witnessed Plaintiff's corrective lenses requirement.

42. On April 11, 2014 a PERB settlement hearing *for a different case not involving Mr. Odums* (U-33283) but wherein the Authority refused to recognize Petitioner as a Shop Steward, or acknowledge that the position exists at all, or to allow Petitioner to identify himself as a Shop Steward to Union Members at work during lunch, etc., in violation of 2008 Stipulation, the Taylor Law, etc., took place. Ms. Nolan again represented the Authority.

43. In 2007 Complainant filed an 'et al.' grievance regarding overtime pay for

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training on regular days off. Grievant prevailed in front of arbitrator Richard Adelman.[9] This victory cost the Authority approximately $1,000,000.

44. Petitioner has approximately a dozen grievances the Authority refuses to hear and have been pending for years.

45. On April 14, 2013, according to testimony by *Labor Relations Director Akselrod at a NY* WCB hearing, Ms. Nolan received a coincidental epiphany or second sight.[10]She called Mr. Akselrod and the brutal, unsafe harassment of whistleblower Burke rose to an unprecedented level.[11]

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[9] NYCTA fired Mr. Adelman in 2013 to avoid losing another substantial *et al.* grievance by Burke regarding seniority and bid rights of open yard and switching jobs being worked by rookies in the YX program. This grievance is still pending.

[10] Ms. Nolan was told by Burke on workday prior that the Odums affidavits she submitted, and presumably wrote, were likely suborned. This issue is being investigated by Brooklyn District Attorneys Office, referred by MTA Inspector General.

[11] The specific horrific harassments orchestrated by Defendants Nolan and Akselrod have never occurred in the 100+ prior years of the subways. The presumptive harassment, distraction, interference, hostility of having 5 supervisors

46. Anonymous calls to D line Dispatcher were made to locate Burke.

47. Mr. Grieves, Burke's assigned TSS, was working on Monday and Tuesday, April 14 and 15, 2014. He was not contacted regarding false malicious 'complaint' by Ms. Nolan,[12] as was procedure and precedent. He would have refused to harass Burke, if directed to do so.

48. On April 14, 2014, a TSS, unknown to this day, entered Petitioners operating cab without cause after verifying that Burke was in compliance with all rules and regulations

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serially attack a train operator while operating was considered too dangerous. The WCB transcripts are in possession of the Authority and a discovery request. Transit has not complied with 26(f) conference request or initial disclosures.

[12] Ms. Nolan's second sight resolved that Burke, a then 13 year Train Operator with a perfect safety record, must be operating trains without wearing the correct required glasses. Ms. Nolan had never seen Petitioner operate but knew of corrective lens requirement and was given copy of certificate years prior. This violation of ADA was the pretext, see ***Reeves v. Sanderson Plumbing Products, Inc.***, 530 U.S. 133 (2000)

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from outside the cab.[13] He proceeded to harass, threaten with false write-ups and otherwise evidence extreme hostility and intimidation. Ms. Nolan was aware of Complainants extreme dislike and fear of exactly this behavior due to prior ordeal involving Mr. LoBianco.

49. On the second interval on Monday, April, 14, *2014, a second unknown TSS entered operating* cab and performed slightly greater harassment and unsafe activity.

50. On Tuesday, April 15, 2014, Ms. Nolan and Mr. Akselrod, instead of dropping harassment, which at that point failed, doubled up. Burke was found to be in compliance with all safety rules on Monday but that was just a pathetic ADA violating

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[13] There is an 18 page procedure, 'efficiency tests', that are regularly performed to catch unsafe activity. Subway crew are observed outside the cab, from the platform, and if in violation are taken out of service and if not in violation, the TSS observes the next train. This was not done, as Ms. Nolan's false complaint was pretext for the criminal harassment.

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pretext. The hostile harassment should have stopped but was only getting started.

51. Over the course of the day and on all three intervals, three TSSs serially entered cab, after verifying that Burke was not violating rules, and proceeded to assault, threaten, intimidate and harass the whistleblower until a panic attack occurred at the end of the day.

52. On April 16, 2014, a day off for Burke to attend monthly union meeting, the attached letter was sent to Barry Kluger, MTA Inspector General, by email and regular mail.

53. On April 17, 2014 Burke reported to work and then filed an 'Injury On Duty'(IOD)and Safety Dispute Resolution Form as stated in letter.

54. Diagnosis of PTSD by Dr. Xao, Dr. Kuhn, Dr. Sherman, and NYCTA Independent Medical

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Examiner Solomon Miskin, M.D., as well as mixed anxiety/depression disorder ensued. This was caused by the concerted activity of Ms. Nolan and Mr. Akselrod.

55. At first WCB hearing, Mr. Greaves appeared for the Authority, and when the Authority realized Mr. Greaves would not perjure himself, i.e. "play ball", he was dismissed *prior to testimony and hearing rescheduled.*

56. At later WCB #G1100520 hearing the three 'Tuesday' TSSs, but for some reason not the Monday 2, testified. Their perjury was clearly coached and suborned.[14] The hearing transcripts are in possession of the Authority. Petitioner cannot afford the various PERB or WCB transcripts or the hiring of counsel due to unlawful

[14] The Perjury and Subornation of testimony at WCB hearing regarding 2014 injury (G1100520) and false material information by NYCTA from 2015 case (G1278038) are being investigated by NYS Inspector General Catherine Leahy Scott.

withholding of wages and benefits and unlawful concerted activity by defendants.

57. The NYCTA withheld 2014 vacation and sick pay, in violation of state laws and contract. This was later paid after grievances and importuning by Union.

58. The NYCTA withheld '60%' sick pay. This is a contractual right of sick pay at 60% of *normal pay when accumulated sick pay runs* out. This was the adverse job action by the Authority that OSHA was investigating as retaliation. The Authority did in fact pay this, 6 months late, at OSHA insistence and OSHA complaint is now withdraw due to compliance.

59. Complainant was sent a termination letter, with the option of reclassification. Despite diagnosis caused by the defendants and various prescription medication, Petitioner

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agreed to medical reclassification[15] to Station Agent title at higher Train Operator's pay.

60. Complainant filed instant case, 15-cv-1481, on Friday, March 20, 2015

61. On Monday, March 23, 2015 Burke started fully paid[16]training at NYCT Learning Center, 2125 West 13th Street, Brooklyn, A.K.A. *the former Public School 248.*

62. On Thursday, March 26, 2015 Ms. Kathianne Boniello emailed and voicemailed Plaintiff requesting information on an article the Post was writing on whistleblowing and the instant case.

63. Early Friday, March 26, 2015 Petitioner phoned Ms. Boniello and answered all

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[15] The NY Post and Ms. Nolan, the cause of the injury and the need for reclassification, referred to this as a demotion, which was deliberately false and defamatory. This was not compulsory.

[16] The Authority is required to pay its represented Civil Servants at full pay and benefits for all required training, as per contract. The Authority has chosen to unlawfully and without cause withhold Burke's 2015 pay, sick pay, overtime pay and 60% pay. A grievance was filed and ignored.

questions. She attempted to construe prior litigation in a light least favorable to the subject of the hit piece. Burke pointed out the successful aspects of that same litigation.[17]

64. On Sunday, March 29, 2015, a deliberately false, malicious, libelous, slanderous, damaging article was published by the New *York Post. This article was disseminated* online at nypost.com, MTA Today website, Facebook and printed up and distributed at PS248 and throughout NYCTA system.

65. The false defamation refers to complainant as a "Train Kook", etc.. This defamatory moniker was employed by unknown employees within the Brooklyn Learning Center and

[17] For example Burke v. Gutierrez, 04-cv-7593, resulted in Burke becoming a Relator (Federal False Claims Act) in finding a $500,000+ fraud against the Department of Justice. This case, 14-7077/78, ongoing in DC Circuit may be and additional cause of NYCTA retaliation, see **CESTRA v. MYLAN, INC. Civil Action No. 14-825** in the WD of Pennsylvania District Court. The 'Taylor Law' challenge resulted in the International Labor Organization ruling in favor of the Local.

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online for the remainder of that week and the article distributed in the lunch room, superintendent's office and throughout the building, including postings.

66. On Monday April 6, 2015 developed another panic attack.[18] A new Injury On Duty (IOD) form and a new WCB case developed, G1278038. Burke was treated on April 6, 2015 by Dr. *Hearns of Central Medical Services of* Westrock, and again diagnosed with a panic attack and PTSD, but caused by the new injury inflicted over the preceding week by defendants.

67. The Post article is false and defamatory on virtually every part, other than the name and age of Plaintiff. The article was submitted as exhibit H in Declaration In

[18] Petitioner never in the previous 52 years evidenced any negative mental manifestations, or was ever treated for any mental issue. No previous panic attack, PTSD or disorder diagnosis occurred.

Support of Motion To Dismiss by Defendant NYCTA.

68. The article headline distributed throughout the NYCTA states 'Satanic MTA out to kill'. This is not a quote and never said, i.e. a false attribution to characterize plaintiff as mentally ill.

69. "Train kook's claim" This is clearly *defamatory and false.*

70. "It's the D train, as in devil." Another defamatory and false comment. The only persons named in the article[19] are Brian Burke and Reverend Sharpton, who does this apply to?

71. The phrase "satanic terroristic criminality" was qualified in the original complaint with a footnote, this is not an accurate quote.

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[19] Petitioner has never been subject of any news article or story previously and considers himself a private person and only contacted Ms. Boniello in order to assist the Post in publishing truth and not deliberate falsehood they chose.

72. "Terrorize[20]" and "assault". Not sure where the source of these "quotes" are from, as the Post/NYCTA, in its successful attempt to defame and damage, parse any random unrelated document to construct their "kookdom".

73. Brian Burke was not demoted in 2014 to station-agent trainee. Brian Burke was not *demoted, other than voluntarily from* Train Dispatcher, and has a perfect disciplinary record. There is no title of Station Agent Trainee, you are either a Station Agent or not. Burke accepted a contractual medical reclassification at the same pay as Train Operator. This took place in 2015, not 2014.

74. As is clear from caption, Petitioner is suing, and works for New York City Transit

[20] The New York Post, a rabid Civil Servant, blue collar and Union hater has previously referred to all TWU Local 100 members who went on strike in 2005, including Petitioner, as terrorists. Peter S. Kalikow, Chairman of the MTA at the time was a previous publisher of the NY Post and may have assisted in getting this article written and published.

Authority, Not the MTA or the Metropolitan Transportation Authority. Two legally distinct agencies. The MTA is not and has not been a party. Burke has never worked for the MTA.

75. The Post/NYCTA claimed "that the MTA[*sic*] intended to "endanger every soul on the train and on the track[21]" in April 2014 when *its inspectors*[22]*entered his train*[23]*to see* weather he was wearing corrective lenses." Clearly entering the train would and should never be a problem, there were thousands of

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[21] As always throughout the hit piece no attribution for the"quotes".

[22] Train Service Supervisors are not "Inspectors" and have received no training as "inspectors" or act as same. There is the civil service titles of Car Inspector and Road Car Inspector, which are important non-supervisory positions in a different department, Car Equipment. They are responsible for repair of trains.

[23] Train Service Supervisors regularly ride trains and empty crew cabs, for compliance with rules purposes. This is an accepted and proper practice and does not interfere with safe train operation or constitute harassment. A TSS can judge the safe operation of a train in this manor without ever entering the operating cab, a presumed distraction at best. Mr. Akselrod and Ms. Nolan regularly terminate Civil Servants for allowing people in the cab, including friends, relatives etc. as the presumed safety violation of having another body in the small cabs is deemed intolerable and unjustifiable for any reason.

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passengers on the train and this is the reason for the subway. Petitioner has no idea, thought or say in how many TSSs, or "Inspectors" for that matter, road his trains on April 14 and 15 2014. This is routine and appropriate. The issue was and is the attacks, assaults and serial harassment by 5 TSSs **IN THE OPERATING CAB**. *The Three TSSs who testified at the WCB* hearing acknowledged that the verified correct eyewear was being worn when the train entered in and stopped in the station and prior to entering cab. Thus this was not the purpose for their presence, which was to harass to the point of a panic attack and PTSD.[24]

[24] Petitioner, in discussions with Union safety personnel, discussed and inquired why the TSSs did something so unsafe and criminal, when they could simply lie and state Petitioner was using a cell phone or wearing no glasses. This is because those accusations as a first offense for a 13 year employee with a clean record would not lead to a termination. Mr. Daley, the last TSS, and to a lesser extent the other 4, maliciously body checked Petitioner three times and clearly was attempting to

76. This case[25] is primarily a retaliation case. While Mr. Odums may have been motivated by other animus, even in his case retaliation for supporting Mr. Estes was the driver. I have no evidence Ms. Nolan is inspired by hatred of Irish or Catholics or men over 40. The possibility exists but Occam's Razor would lead us to retaliation as the sole *motivator for all the most recent adverse* job actions and harassments and hostile workplace.

77. Train Operators are allowed to wear "baseball caps". This is a brutal lie about PERB case # U-33283 where Complainant was barred from identifying himself in any way as a Shop Steward on NYCTA property or

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cause a defensive push away, which would then be characterized as an assault by Mr. Daley and immediate termination and designation as a criminal. There was some testimony at the WCB hearing of an additional supervisor or manager at 205 street station, who conspired to establish and then verify this.

[25] And the United States Department of Commerce case, The Census Bureau was never sued.

during lunch. Petitioner never kept "moldy food" in any refrigerator, which would and should be removed or banned, but honey, which never spoils, and lemon juice. False, malicious, defamatory and damaging.

78. "Transit sources", i.e. Ms. Kristen Nolan, knows that PERB did not "rejected his claim that he was assaulted by a boss in 2007." *Again false and defamatory. There was no* rejection full stop. There was a negotiated stipulation that NYCTA cease and desist prior unlawful activity and recognize Plaintiff as a Shop Steward.

79. "Burke" was never asked to remove required eyewear. Again false and defamatory, a false ADA violating pretext for the unsafe and unlawful harassment.

80. Workers Comp case #G1100520 is before the full WCB panel due to Perjury, Subornation and Obstruction by the NYCTA. As an example

all three testilying TSSs stated that they were standing three feet away[26], which was impossible if they were also watching the track and signals, as they stated under oath. Admittedly, if they told the truth they would be fired.

81. Burke would be making the same, 71K, as a Station Agent, due to the fact it was not a *demotion. The NYCTA has not paid Burke for* the two weeks at PS248 or 12 sick days, 3 vacation weeks or 9 hours overtime worked this year. Wage theft and additional predicate RICO acts.

82. Burke was never "laid off" by the US. Census Bureau, the census ended. The Census Bureau was never sued. Petitioner was already engaged in NYCTA hiring process at the time and the NYCTA bans dual employment, a firing offense.

[26] One TSS stated the correct three inch distance until ordered by NYCTS to change to the suborned, coached perjury

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83. At PERB hearing of March 27, 2014, U-32637, Burke asked Ms. Nolan of she represented Mr. Odums, simple question. No simple answer. This non answer lead Petitioner to believe the clear perjury by Mr. Odums was suborned. It s longstanding NYCTA practice for the Department of Law to throw the lowest ranking person possible under the bus. In *this case it would be Mr. Odums. Clearly,* Ms. Nolan pretended to be Mr. Odums attorney so he would sign the false affidavits and she could win her cases. Mr. Odums has no rational legal reason to endorse the perjury and certainly should have been apprised of the conflict of interest he had with Ms. Nolan, who has always only represented the NYCTA and the Department of Law.

84. The same goes with the suborned WCB testilying. The three TSSs were not represented by their own counsel and clearly

coached and pressured into their perjury. Clearly they were told if they told the truth they would be fired, which is true as any harassment is a termination violation. But since no witnesses or recording is allowed in operating cab we have the perfect, albeit wildly unsafe, location to terrorize at the orders of Ms. Nolan and Mr. Akselrod.

85. Mr. Delize was the Line Superintendent who allegedly ordered the 5 TSSs to harass Burke. He has been forced to retire. There is no evidence that he could grab so many supervisors off of other lines for this campaign of terror. General Superintendent Roderick O'Toole and Director Akselrod could and did. Mr. Delize and even the 5 TSSs are the fall guys and patsies for their superiors.

86. After returning to work, on September 13, 2001, from assigned regular days off, Petitioner was assigned to relay trains from Chambers Street (under the 9/11 pile) to Canal Street. Plaintiff has qualified for and been treated under the World Trade Center Health Program at Bellevue Hospital and additionally been diagnosed with and *treated for Chronic Rhinitis and* Rhinosinusitis.

87. From January 2010 to January 2014, Petitioner was a contractual Safety Representative, released monthly or more often to do "safety walks" and write up safety violations by management. Assigned to South Ferry and City Hall Terminals, Petitioner consistently wrote up the relentless, dangerous leaks at South Ferry and the damaging 'Steel Dust' at City Hall. It was alleged, by the South Ferry

Contractor, that the MTA did not require South Ferry Station, mere feet from the Harbor, not be waterproofed, and it clearly was not. This would require a 600 million $ redo, but Transit was "saved" by Sandy. The 'Steel Dust' pathology, inhaled by passengers and employees alike, was/is covered-up and the Local was forced to *employ an alternative Safety Representative* at those locations by Management insistance.

88. On April 9, 2015, NYCTA had an affirmative obligation to pay Petitioner for the two weeks of Station Agent training and 10 hours of overtime, at Train Operator pay. In an ongoing criminal act, or acts, NYCTA has, without pretext or precedent, withheld this pay through today, a year and a half later. Every two weeks after April 9, 2015, NYCTA was contractually required to pay out accumulated sick and vacation pay. This was

also not done and likewise without pretext or precedent. After the accumulated sick and vacation was paid, 12 sick and 15 days vacation, Petitioner was, again, entitled to 60% sick pay, this time 60 days worth. Over 30 Thousand dollars of earnings stolen from Petitioner as Retaliation for **FILING THE INSTANT CASE!!!!!!!** These monies were *properly paid out in 2014 for the April 2014* injuries caused by Management/Department of Law, but in an ongoing criminal conspiracy, attacking Due Process and the Rule of Law, never previously preformed by NYCTA this massive wage theft/Wire & Mail Fraud goes on unwarranted. Petitioner would have been entitled to additional sick and vacation days in 2016, based on these (non)payments. Unprecedented criminality solely for retaliation for all protected activity and, again, without pretext.

89. Due to the aforementioned ongoing criminal retaliatory wage theft, Petitioner was also denied Unemployment Benefits. Given that UI benefits are based on "remuneration" it was decided by a NYS Department of Labor ALJ that the unpaid wages could not be used to determine a basis for UI payments. NYCTA did not report these earnings to NYS Department *of Labor and thus additionally committed* Unemployment Insurance Fraud.

90. Petitioner received a letter from NYCTA, purportedly signed by a Ms. Monica F. DaCosta, admittedly unknown to Petitioner. On Information and Belief, this unlawful, baseless and pretext-less definitive adverse job action was actually preformed by, or at the instigation of Ms. Kristen Nolan. Ms. Nolan testified at a WCL 120 Hearing September 28th 2016 that she had personal knowledge of this unlawful, retaliatory

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baseless "Termination of Probation" but claimed privilege as to her role. First, Petitioner was not on "probation" and thus not an employee at will. There was no promotion or demotion, which would require probation, and petitioner neither agreed to nor was notified of this non-probation. NYC Department of Citywide Administrative *Services was, in addition, not notified of* this mythical, retroactive double secret "probation" as required by *NYC Personnel Rules and Regulations* and precedent. Given that the imagined "probation" did not exist, no extension of probation could have occurred and more than one year elapsed since the medical reclassification to Station Agent. DCAS was also not informed of any "extension" as required.

91. Ms. Nolan, on September 28, 2016, committed Perjury and Obstruction of Justice in testilying about her role as the "transit source" in the Train Kook defamatory article. Ms. Nolan, the nexis of retaliatory activity and hostile workplace directed against complainant, clearly Suborned the acknowledged Perjured Affidavits by Mr. Odums, ordered the 5 supervisors to physically and verbally assault petition *while operating trains full of innocent* passengers, called the Post and got the false defamatory article published, had it disseminated at work, withheld pay and terminated Complainant. The greatest possible amount of unlawful, baseless retaliation in the body of law.

92. Petitioner obtained and attached to the admitted Third Amended Complaint for SDNY case **#09 Civ. 3291 Burke v Metropolitan Transportation Authority/NYC Transit Authority & Public Employment Relations Board & NY Attorney General Andrew M.**

Cuomo a "Right to Sue" letter from EEOC. Petitioner will require a modicum of Discovery from NYCTA, a party to that suit, to obtain a copy, if it cannot be located in hard copy case file or EEOC office. It is not available on PACER, for some reason. See [27]

NEXIS

On April 14 and 15, 2014 Ms. Kristen Nolan, *esq.*, an attorney for NYCTA Department of Law, in

1. [27] "The Second Circuit has consistently found that when, as here, an employee claims that he has suffered retaliation because he pursued a discrimination charge, the subsequent retaliation claim is "reasonably related" to the underlying discrimination charge. *Butts v. City of N.Y. Dep't of Hous. Pres. and Dev.*, 990 F.2d 1397, 1402 (2d Cir. 1993), superseded on other grounds by statute, **Civil Rights Act of 1991**, Pub. L.No. 102-166, 105 Stat. 1074 (collecting cases). Accordingly,[**10] a plaintiff generally need not file a new charge with the EEOC in order to pursue his retaliation claim in federal court.Id. The three-year lapse between the filing of the discrimination charge here and the subsequent retaliation suit does not change this conclusion. The Second Circuit has found a reasonable relation despite longer lapses, see *Legnani*, 274 F.3d at 686 (retaliation suit based on 1998 firing reasonably [*357]related to 1993 EEOC charge); *Shah v. N.Y. Dep't of Civil Serv.*,168 F.3d 610, 614 (2d Cir. 1999) (retaliation suit based on adverse actions taken in 1991 and 1994 reasonably related to 1990 charge), and JIB fails to adduce facts that would warrant a different result in this case." *Infantolino v. JOINT INDUSTRY BD. OF ELEC. IND.*, 582 F. Supp. 2d 351 - Dist. Court, ED New York 20087

concert with Mr. Leonard Akselrod, Director of Labor Relations for NYCTA over Department of Subways Rapid Transit Operations (RTO), and others, conspired to violate Petitioner's civil rights in an organized campaign to terrorize and constructively terminate, defraud and actually terminate, primarily for reasons of retaliation for Protected Activity. No pretext has been proffered by NYCTA *for any of the criminal acts. Complainant* is a Whistleblower; in fact the top, if not only, at the Authority. Ms. Nolan works in the NYCTA Department of Law section dealing primarily with, as they see it, 'recalcitrant' civil (or indentured) servants. The goal of that department is to win at any cost, i.e. "by any means necessary"[28]. Ms. Nolan dealt with this plaintiff over the years on numerous occasions at length and in person. These activities included, but were not

[28] **Malcolm Little** and also known as **El-Hajj Malik El-Shabazz**

limited to, several hours at a '50h'[29] hearing and one or more Public Employment Relations Board (PERB) hearings or settlement conferences. Complainant is required to wear 'corrective lenses' when operating a train, or in fact any vehicle. Please see attached 'IG Letter' which was served on the Authority as a signed Affidavit with attached and timely served Notice of Claim, exhibit 2. Ms. *Nolan, after several years and numerous in person* contacts, appeared to 'discover' (based on testimony at 2014 NYS Department of Labor hearings) one or more 'disabilities'[30]. Incredibly, Ms. Nolan, and her co-conspirator Mr. Akselrod, used their own definition of disability under ADA, (see c, being regarded as having such an impairment) as their unlawful 'pretext' (again WCB hearings 2014[31]) to terrorize a whistleblowing enemy while performing his safety sensitive train operation. To repeat, after 13+ years of safe train operation (perfect disciplinary record[32]) these two individuals, acting for the Authority decided to unilaterally, dangerously and secretly withdraw what they saw as a 'reasonable accommodation' under ADA. To *accomplish this they ordered at least 5 Train* Service Supervisors (TSS) to terrorize, harass, 'interfere with safe train operation', assault and create the penultimate 'hostile workplace environment' within the small confines of an operating cab while train was in motion with up to

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[29] N.Y. GMU. LAW § 50-h : NY Code - Section 50-H: Examination of claims. Petitioner was not given requested required transcript of that hearing and request said transcript be included as evidence by reference in this complaint.

[30] Sec. 12102(ADA). Definitions (2) Disability: The term "disability" means, with respect to an individual -(A) a physical or mental impairment that substantially limits one or *more of the major life activities of such individual;* (B) a record of such an impairment; or (C) being regarded as having such an impairment.

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[31] The Authority, as is their practice, on the record stated they would purchase the WCB hearing transcript and supply same to Petitioner's Counsel for approval. This was not done and Complainant wishes to include said transcripts by reference and will require same for any 12(b)6 motion.

[32] Plaintiff not only has a perfect disciplinary file, but was accepted by the Authority as a Trainer, worked 4 years as a contractual Safety Representative and was a supervisory Train Dispatcher who opted for voluntary demotion for reasons of pay, seniority, 2 year probation, *etc.*.

2,000 passengers. This satanic[33] terroristic criminality was intended to, and did in fact, endanger every soul on the train and on the track. Please see attached (exhibit 3) document from the federal Department of Labor (Occupational Health and Safety Administration (OSHA)) accepting this petitioners *prima facia* case for retaliation by not paying owed 60% sick pay. The OSHA case has been *withdrawn as the 60% from 2014 has been paid.*

Petitioners Union (Transport Workers Union, Local 100) has been fully apprised of this unlawful conduct and is fully supportive of their member. They are especially concerned as this new unwritten policy by the Department of Law and Labor Relations instructing supervisors that they have a free hand to attack and harass whistleblowing, or in fact any unpopular Train Operator, Conductor or Bus Operator. This is an extreme danger to the lives and careers of operating Civil Servants, not to mention the public. We know why the Authority retaliated against this whistleblower but why endanger the public? Primarily two reasons (1) There can be no witnesses. Conductors and Train Operators can, and have been terminated for allowing unauthorized personnel in the cab, as anyone in the cab is a potential distraction and *presumptively unsafe. (2) No recordings. Operating* personnel are affirmatively barred from using any "electronic device" while operating. Thus to record any attack while operating would itself be a termination offense. So we now have the infamous he said/she said dissonance. If the harassing supervisors, acting on management direction/protection, told the truth they would be fired on the spot. So they 'testily'. Let us go to management's version of what happened (see again, by reference, WCB transcripts possessed by defendant). Ms. Nolan on Friday April 11, 2014 at a

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[33] The NYCTA Department of Law's motto,"Do what thou wilt shall be the whole of the Law….." developed in the early 1900s by Aleister Crowley.

PERB settlement conference was told that 3 Affidavits she submitted may have been suborned. Apparently she agreed as on the following workday she called in her favors with management and set about successfully separating Complainant from his livelihood and into treatment for medical maladies caused by said campaign of terror. Please see again 'IG Letter'. The Subornation of the 3 Affidavits is *being investigated by the Kings County DA, in* cooperation with TWU Local 100. The 3 TSS's that terrorized the Plaintiff on Tuesday, April, 15, 2014 testilied at several WBC hearings in 2014. They lied not only about not harassing or assaulting the injured party but on provable deliberate misstatements. For example, all three stated that they were standing 3 feet away while contradictorily stating they were viewing the track and approaching signals. At 3 feet away the view is blocked by the bulkhead, as the suborning attorney did not know. One TSS stated he was 3 inches away (correct) and then cued by NYCTA counsel changed that to the "3 feet" perjury. In an attempt to mitigate the crime, one TSS stated, under oath, that Petitioner, or in fact any Train Operator, was allowed to expel or bar them from the operating cab. This was brutally contradicted by the TSS that endangered the complainant (and the public) the most by the ferocity of his attack, TSS Daley. So *why would the 5 TSS's perform management's bidding* and instruction to harass and terrorize a Motorman while he is operating a train? Consideration. The next promotion from TSS is Deputy Superintendent, a managing title not subject to Civil Service law or procedure. No team player, no promotion. Of course, TSS's can themselves be harassed by management, even if they do not seek promotion, via job assignments etc., or even be demoted if still on their unlawful 2 year promotion (see IG Letter). NY Attorney General appears to agree with Plaintiff re. this Perjury/Obstruction of Justice/WC Employer

Fraud, see attached letter regarding Third Judicial Department WC appeal.

NORMAL PROCEDURE

A neutral fact finding body may ask, "What is the procedure if a complaint, deliberately incorrect or not, is received by management?" Occasionally, safety complaints are made by passengers or employees. Depending on the nature of the complaint, it is either *ignored or investigated by one's assigned TSS*. Every TSS has approx. 30 hourlies assigned to them and any investigation regarding those thirty is put to them. But not in this case. Why? Because Mr. Greaves, Petitioner's assigned TSS, would not perform the necessary terroristic hostile acts. Simple. TSS Greaves was available and on the clock on both April 14 and 15th 2014, the dates of the concerted adverse job actions, and was not contacted by management to investigate. TSS Greaves was called by the Department of Law to testify at a WCB hearing and when the Authority Counsel saw his testimony would be inculpatory to their case he was sent home and an adjournment was requested. When are complaints not even investigated? When they involve allegations of unsafe train operation by someone who never saw the person operate, such as the malicious complaint by Ms. Nolan. There is a procedure to catch safety violations by operating personnel, complaint or no complaint, malicious or not. They are called "Efficiency Tests" and are regularly performed to catch *unsafe operation. Petitioner has a 24 page directive* which will be entered as an exhibit if Defendant does not acknowledge their violation of this procedure. Initially, all 5 TSSs comported with the standard operating procedure (SOP) in observing Petitioner in entering and stopping at boarding stations. They acknowledged observing Complainant, as always, in compliance with all safety bulletins and rules. The SOP is to then wait for the next train and do an identical observation. Instead, in violation of over a 100 years of precedent regarding safe train operation, all five, over the course of two days, in an escalating manor, instituted their 'hostile workplace' on this bizarre flimsy 'pretext' immediately after it was proven false. There was no legitimate reason for any of the 5 to enter the operating cab and interfere with safe train operation, endangering the Public, contractors and employees. Mr. Akselrod was asked, under oath, if he ever ordered similar treatment on another employee. He answered in the negative. Management would love to *expand on this newfound 'management prerogative' to rid* themselves of all actual, or potential, whistleblowers and if it endangers millions of passengers and tens of thousands of employees, so what? "By any means necessary", "Do as thou wilt" and finally, "Power corrupts….[34]". Petitioner pleads to this neutral fact finding body to end this criminality.

EEOC "RIGHT TO SUE" LETTER

Please see attached exhibit 1. This case was filed within 90 days of receipt of letter, received on 12/26/14. Also attached is the 'Intake Questionnaire'

[34] "Power tends to corrupt and absolute power corrupts absolutely." John Dalberg-Acton, 1st Baron Acton

for EEOC case # 520-2015-00756, with Petitioner claiming discrimination as a protected class under race, sex, age, disability, national origin, religion, and retaliation. Complainant has filed previous EEOC action and assisted TO Estes in his Transit EEO case.

Petitioner acknowledges a previous "Right to Sue" letter used for previous federal civil rights case against defendant NYCTA from 2009. See also *Infantolino v. JOINT INDUSTRY BD. OF ELEC. IND.*, 582 F. Supp. 2d 351 - Dist. Court, ED New York 2008

CONCLUSION

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, punitive damages, pre-judgment interest, medical costs, other costs, back wages, pain and suffering, and attorney's fees.

Dated this 24TH day of October, 2016

/S/Brian Burke, *pro per*

c.c. Daniel Chiu, esq.

130 Livingston Street, Brooklyn, NY 11201

Brian Burke

145 East 23rd Street • New York, NY 10010• Phone: 646-434-8513 • Fax: [Your Fax]
E-Mail: briantburke@gmail.com Web: [Web Address]

Date: Thursday March 3, 2016

APPEAL BOARD
UNEMPLOYMENT DIVISION
NEW YORK STATE DEPARTMENT OF LABOR
P.O. BOX 15126
ALBANY, NY 12212-5126
FAX 518-402-6208
RE: A.L.J. CASE # 016-00819

Dear Unemployment Insurance Appeal Board:

I am the Claimant, Brian Burke, in regard to A.L.J. case no. 016-00819 against employer NYC Transit Authority. I am requesting an APPEAL of the DECISION by ALJ Nicole Beason of February 18, 2016. The reasons are as follows;

1. At the sworn Hearing of February 8, 2016 at 250 Schermerhorn St. the Transit Authority witness NYCTA Human Resources Analyst Monique Baptist testified and acknowledged under oath that approximately 95 hours of straight and overtime pay were withheld without legal reason, a willful violation of the Fair Labor Standard Act, etc.. In addition Claimant testified that 15 days X 8 hours earned vacation pay were identically without legal cause unpaid. In addition 12 sick days X 8 hours and 60 sick days @ 60% pay where identically without cause criminally withheld. This was not disputed by Authority witness, see transcript. At the contractual wage rate of $33.16 an hour for Train Operator, this ongoing felony involves wage fraud and Retaliation for over 21K in stolen wages. If this not for this ongoing criminal act, a lawful unemployment claim would have been established for work done in 2015. This calculation was in fact made in 2015 by Supervisor Heather Storer of NYS Department of Labor heather.storer@labor.ny.gov .

2. **The question is thus a legal question of First Impression** for the Board. The Decision quoted no case law and admittedly Claimant could equally find none. The Transit Authority does not oppose the claim or dispute the wage theft. Should New York State count acknowledged wage theft effectively as part and parcel of "paid remuneration" or alternatively legalize this moral hazard of Wage Theft? Should an employer acting in Bad Faith without lawful pretext be allowed to steal earned wages from a Whistle-blower, or any other employee, in order to also deny an unemployment claim after an unlawful constructive termination? This is the issue for the Board. If the Board allows no 'bad faith' exception to the ALJ's First Impression injudicious interpretation of 'paid remuneration' as not including acknowledged wage theft, then employers throughout the state will do exactly as Transit has done. This will exponentially increase the number of cases handled by the NYS DOL. In regard to some case law *Rutzen v. Monroe County, 104 Misc. 2d 1000 - NY: Supreme Court, Monroe 1980"* It is clear that plaintiff received the benefits only by meeting certain eligibility requirements which include having worked a certain *number of weeks at a certain minimum salary during the period preceding the claim for unemployment insurance* (see **Labor Law, § 527)"**. Justice, and the intent of the legislature, requires that employers not benefit from Unclean Hands or Bad Faith. This Moral Hazard of benefiting the wrongdoer and punishing the victim is legally

and factually wrong on its face and must be overturned as Arbitrary and Capricious. As seen above, the Courts interpret Statute 527 as the time worked.

3. The issue is should 'earned remuneration' effectively = 'paid remuneration' for purposes of NYSLL, when Employer has willfully and admittedly, without lawful cause or pretext, not conveyed, withheld or stole said earnings, wages and/or remuneration that would otherwise establish a claim. This Decision of course punishes the victims of an unlawful constructive termination, wage theft or wage fraud, especially a government employee or whistle-blower, by injudiciously blocking an otherwise legitimate unemployment claim and encourages and legalizes said conduct. *IN THE MATTER OF NIEBLAS, 21 AD 3d 1193 - NY: Appellate Div., 3rd Dept. 2005.* "Inasmuch as the record establishes that claimant did not have sufficient earnings[1] in his base period or an alternative base period to qualify to file a valid original claim for benefits, substantial evidence supports the Board's decision (see Labor Law §§ 520, 527; *Matter of Badrajan [Commissioner of Labor], 275 AD2d 830 [2000]). And Matter of Bellamy, 34 AD 3d 891 - NY: Appellate Div., 3rd Dept. 2006"* In any event, it is undisputed that claimant did not have sufficient earnings in his base period, from April 1, 2002 to March 31, 2003, to qualify to file a valid original claim (see **Labor Law § 527**; *Matter of Rodriquez [New York City Dept. of Educ. Commissioner of Labor], 24 AD3d 934 [2005]*; *Matter of Nieblas [Commissioner of Labor], 21 AD3d 1193, 1194 [2005]*). And *MATTER OF SCHULZ, 300 AD 2d 729 - NY: Appellate Div., 3rd Dept. 2002* "Inasmuch as the record establishes that claimant's base period earnings are not 1½ times his highest calendar quarter of $10,375.51 (*see* **Labor Law § 527** [1] [d])." And *IN THE MATTER OF PERRY, 2011 NY Slip Op 9557 - NY: Appellate Div., 3rd Dept. 2011* "**Labor Law § 527** (1) (d) provides for the exclusion of *wages earned* from "employers from whom the claimant lost employment under conditions which would be disqualifying pursuant to [section 593 (3)]." However, Labor Law § 593 (3) specifically provides that such a disqualifying condition is eliminated after the claimant "has subsequently worked in employment and earned remuneration at least equal to five times his or her weekly benefit rate." It is undisputed that claimant **earned the requisite remuneration** in subsequent employment." Clearly "earnings' is the operative word for The Third Department, not this injudicious anti-labor interpretation of remuneration.

4. Misconduct. **Sec. 593. Disqualification for benefits** "Voluntary separation; separation for a compelling family reason. (a) No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and **earned remuneration** at least equal to ten times his or her weekly benefit rate." We see the term "earned remuneration", yet in this case the victim of misconduct has been disqualified of benefits. See also **Sec. 593** 3. Misconduct. No days of total unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his or her employment until he or she has subsequently worked in employment and **earned remuneration** at least equal to ten times his or her weekly benefit rate." Again "earned remuneration".

5. Estoppel of Laches and Unclean Hands. In addition to the agreed to theft of wages and benefits (remuneration), the Authority is committing Employer Unemployment Fraud, **Sec. 565. Governmental entities.** In addition this admitted and wilfull violation of **Sec. 575. Maintenance, audit, and report of remuneration and employment records, should be punished under Sec. 575-a. Penalties relating to wage**

[1] The courts seem to prefer the term earnings, and not paid remuneration, in interpreting *Labor Law 527*. It is not disputed that earnings were sufficient in 2015 to establish a claim.

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information and not rewarded by DOL or covered-up. By not paying owed earned wages the Unemployment Insurance fund is identically being shortchanged willfully the same as if the payments were actually paid 'under the table' or cash. Claimant has attempted to report this crime, which should be investigated by the Department of Labor and not covered-up. Claimant was also informed that the NYS DOL Wages and Hour Division that this crime will not be investigated due to an interpretation of state law wherein this Employer is not an Employer, (see Catch 22, Joseph Heller). See **Sec. 633. Wilful failure to pay contributions** "Any person who wilfully refuses or fails to pay a contribution to the fund shall be guilty of a misdemeanor." and **Sec. 632. False statements or representations.** "(b) in order to reduce the amount of contributions to the fund. The actual enforcement of this requirement does not seem to concern the DOL, which does concern this Whistle-Blower.

6. **Unconscionability, see also *Nemo auditur propriam turpitudinem allegans***

7. **Fair Play and Substantial Justice. Miscarriage of Justice. Moral Hazard.**

8. Claimant respectfully Requests this Appeal Board Overturn and Reverse ALJ Decision in order not to unintentionally legalize and encourage wage theft and fraud against innocent employees and instead clarify a rational judicious correct interpretation of relevant statute of First Impression wherein the term "paid remuneration" is legally identical to "earned remuneration" in regard to New York Labor Law in cases of admitted wage theft, as clearly intended and implied and not in a manor to reward prospective fraud feasors and racketeers. Claimant *Requests further Hearing under **Sec. 621***

Sincerely,

Brian Burke
Station Agent, Claimant, Appellant

T 29—Notice of Claim against blank Transit Authority: 6-83 JULIUS BLUMBERG, INC. PUBLISHER, NYC 10013

In the Matter of the Claim of

BRIAN BURKE

against

NEW YORK CITY TRANSIT AUTHORITY

TO:

TRANSIT AUTHORITY

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

BRIAN BURKE PROSE
145 EAST 23RD ST APT 4R
NEW YORK, NY 10010

2. The nature of the claim: CIVIL & CRIMINAL ESCALATING HARASSMENT N.Y. Fin. Law §§187-194 UNLAWFUL & CONSTRUCTIVE TERMINATION FRAUD 18 U.S.C 1964 VIOLATIONS OF 115 STAT 272, PCA 460 SEC 460.20, 84 STAT 922-3 42 U.S.C. 1983, AND ALL OTHER FEDERAL, NYS AND NYC LAWS THAT APPLY. TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

3. The time when, the place where and the manner in which the claim arose: FROM THE TIME OF, APPROXIMATELY, 14:47 (2:47 PM EST) STILLWELL TERMINAL, CONEY ISLAND, BRKN, NY TO 21:40 (9:40 PM EST) BEDFORD PARK TERMINAL, TIMES AND LOCATIONS IN BETWEEN INCLUSIVE, ON MONDAY APRIL 14, 2014 ALSO, APPROXIMATELY, 1447 (2:47 PM EST) STILLWELL TERMINAL, CONEY ISLAND, BKLY NEW YORK TO, APPROXIMATELY, 21:40 (9:40 pm EST) BEDFORD PARK TERMINAL, BRONX, NY INCLUSIVE OF TIMES AND LOCATIONS IN BETWEEN, APRIL 15, 2014

4. The items of damage or injuries claimed are:* TERRORISTIC, CONSPIRATORIAL ACTS COMMITTED UPON A WHISTLEBLOWING CIVIL SERVANT. $10,000,000. PUNITIVE DAMAGES $100,000,000 BRIAN BURKE WAS DIAGNOSED WITH ACTUAL POST TRAUMATIC STRESS DISORDER BY DR. JEAN XIAO, MD ON APRIL 21, 2014 DUE TO CONCERTED ACTIVITY BY R.I.C.O. ACTORS WORKING FOR DEPARTMENT OF LAW, NYCTA (GENERAL COUNSEL'S OFFICE) AND SUBORDINATES. PLEASE SEE ATTACHED "IG LETTER".

TOTAL AMOUNT CLAIMED* ($110,000,000.00)

* Do not state dollar amounts outside of New York City.

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number
TSS Daley	Train Service Supervisor	Bedford Park Station, Bronx New York 347-643-7700

What do you believe this person will tell us?
That he did not harass me or interfere with my train operation.

B. Full Name	Job Title	Address & Phone Number
Leonard Akselrod	Director of Labor Relations	2 Broadway, New York, NY 511

What do you believe this person will tell us?
That he did not retaliate or discriminate against me. He will have to acknowledge the conspiracy, but will claim attorney client privilege, despite the fact Ms. Nolan is not his attorney.

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes ☐ No ☒

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

16. Have you sought help about this situation from a union, an attorney, or any other source? Yes ☒ No ☐
Provide name of organization, name of person you spoke with and date of contact. *Results, if any?*
Levine & Blit, PLLC, Linsey Blackwell, esq. November 21, 2014. Considering representation. IG Letter sent to MTA Inspector General and others by email on April 16, 2014 and later by certification. Contacted by Kings County DA.

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1 ☐ I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. **I also understand that I could lose my rights if I do not file a charge in time.**

Box 2 ☒ I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the **EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name.** I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

[signature] 12/01/2014

Signature **Today's Date**

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974; Public Law 93-579. Authority for requesting personal data and the uses thereof are:
1. **FORM NUMBER/TITLE/DATE.** EEOC Intake Questionnaire (9/20/08).
2. **AUTHORITY.** 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626. 42 U.S.C. 12117(a), 42 USC §2000ff-6.
3. **PRINCIPAL PURPOSE.** The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. **ROUTINE USES.** EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION.** Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

Of the persons in the same or similar situation as you, who was treated *worse* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
None		

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Of the persons in the same or similar situation as you, who was treated the *same* as you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
Roger Toussant	Black Male Trinidad, unknown	Track Worker

Description of Treatment Terminated without legitimate cause, investigated by PI's paid out of public funds, etc.

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:

☐ *Yes, I have a disability*
☐ *I do not have a disability now but I did have one*
☒ No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).
See attached 'IG Letter". The perceived "disability" or "disabilities" does not and has not limited anything. I have been required to wear corrective lenses for 13+ years, as I have done.

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

Yes ☒ No ☐

If "Yes," what medication, medical equipment or other assistance do you use?
Prescription glasses.

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes ☐ No ☒

If "YES", when did you ask? ____________ How did you ask (verbally or in writing)? ____________

Who did you ask? (Provide full name and job title of person)
I have been required by the NYCTA to wear corrective lenses for 13+ years

Describe the changes or assistance that you asked for:
To be allowed to do my job without public endangering harassment, see 'IG Letter'

How did your employer respond to your request?
By brutal unsafe harassment, constructive termination, denial of 60% sick pay, etc..

If Job Applicant, Date You Applied for Job ____________ **Job Title Applied For** ____________

4. What is the reason (basis) for your claim of employment discrimination?
FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. *If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to* Retaliation.

☒ Race ☒ Sex ☒ Age ☒ Disability ☒ National Origin ☒ Religion ☒ Retaliation ☐ Pregnancy ☐ Color (typically a difference in skin shade within the same race) ☐ Genetic Information; choose which type(s) of genetic information is involved:
☐ i. genetic testing ☐ ii. family medical history ☐ iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: Roman Catholic, Irish

If you checked genetic information, how did the employer obtain the genetic information? ____________

Other reason (basis) for discrimination (Explain). Retaliation for protected activity, including assisting former TO Estes in EEO com.

5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. **Please attach additional pages if needed.**
(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: 12/01/2014 Action: Refusal to pay 60% sick, as per contract, as retaliation for filing grievances, safety reports, as a Safety Rep, assisting members as a Shop Steward, filing PERB cases, etc.

Name and Title of Person(s) Responsible: Leonard Akselrod, Director of Labor Relations, Kristen Nolan, esq. Attorney NYCTA DOL

B) Date: 04/14/2014, 04/15/2014 Action: Brutally and criminally harassed while operating train by half a dozen supervisors in an escalating manor. This resulted in a PTSD diagnosis, which is being treated

Name and Title of Person(s) Responsible: Leonard Akselrod, Director of Labor Relations, Kristen Nolan, esq. Attorney NYCTA DOL

6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.
I reported Subornation of Perjury by the NYCTA Department of Law, please see attached 'IG Letter'. This is being investigated by Kings County District Attorney's Office

7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?
The alleged 'discovery' of what the NYCTA claims, after 13 years of reasonable accommodation, to perceive as a disability, see 'IG Letter'. By Kristen Nolan, esq., the Suborner, Leonard Akselrod and the Train Service Supervisors who brutally harassed this Civil Servant out of his job. They have stated that they will continue this conduct, where I to return to train operation, endangering the public, myself and fellow employees, as precedent against whistleblowers.

8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.

Of the persons in the same or similar situation as you, who was treated *better* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
All other Train Operators	All	Train Operator

Description of Treatment Unprecedented interference (within the last 100 years) of safety sensitive Civil Servant, creating danger. No legitimate cause was found for this harassment pretext.

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
Evan Miller	Black Female rest unknown	Conductor

Description of Treatment Paid 60% sick while out on controverted workers comp claim

520-2015-00796

RECEIVED DEC 10 2014 EEOC-NYDO

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
INTAKE QUESTIONNAIRE

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.

1. Personal Information

Last Name: Burke First Name: Brian MI: T

Street or Mailing Address: 145 East 23rd Street Apt Or Unit #: 4R

City: New York County: New York State: NY ZIP: 10010

Phone Numbers: Home: (646) 434-8513 Work: (347) 643-7700

Cell: (212) 614-8515 Email Address: brianfburke@gmail.com

Date of Birth: 09/13/1961 Sex: Male ☒ Female ☐ Do You Have a Disability? ☒ Yes ☐ No

Please answer each of the next three questions. i. Are you Hispanic or Latino? ☐ Yes ☒ No

ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaska Native ☐ Asian ☒ White ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? Irish

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Thomas Burke Relationship: Father

Address: 850 Broderick Street, apt 317 City: San Fransisco State: CA Zip Code: 94115

Home Phone: (510) 258-4627 Other Phone: ( )

2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify)

Organization Contact Information (if the organization is an employer, provide the address where you actually worked. If you work from home, check here ☐ and provide the address of the office to which you reported.) *If more than one employer is involved, attach additional sheets.*

Organization Name: New York City Transit Authority

Address: Stillwell Avenue Terminal County: Kings

City: New York State: NY Zip: 11224 Phone: (347) 643-7700

Type of Business: Subway Job Location if different from Org. Address:

Human Resources Director or Owner Name: Thomas F. Prendergast Phone: 212-878-7000

Number of Employees in the Organization at All Locations: Please Check (√) One

☐ Fewer Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☒ More than 500

3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? ☐ Yes ☒ No

Date Hired: 02/26/2001 Job Title At Hire: Train Operator

Pay Rate When Hired: Minimum wage Last or Current Pay Rate: $33

Job Title at Time of Alleged Discrimination: Train Operator Date Quit/Discharged: n/a

Name and Title of Immediate Supervisor: Train Service Supervisor Greaves

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Offi

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3620
General FAX: (212) 336-3625

Austin F. Turner
Investigator
Phone (212) 336-3750
Fax (212) 336-3624

VIA U.S. MAIL
Brian Burke
145 East 23rd Street
Apt. 4R
New York, NY 10010

Re: Burke v. New York City Transit Authority
EEOC No.: 520-2015-00756

Dear Mr. Burke:

The Equal Employment Opportunity Commission (hereinafter referred to as the "Commission") has reviewed the above-referenced charge according to our charge prioritization procedures. These procedures, which are based on a reallocation of the Commission's staff resources, apply to all open charges in our inventory and call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce.

In accordance with these procedures, we have examined your charge based upon the information and evidence you submitted. You allege you were discriminated against because of your race, sex, national origin, age, disability, religion and participation in a protected activity.

Per our conversation of December 10, 2014, the Commission has reviewed the information you submitted and has determined that there is not enough information to conclude that further investigation would likely result in finding a violation of federal law.

This does not certify that Respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

The Commission's processing of this charge has been concluded. Included with this letter is your Notice of Dismissal and Right to Sue. Following this dismissal, you may only pursue this matter by filing suit against the Respondent named in the charge within 90 days of receipt of said notice. Otherwise, your right to sue will be lost.

Please contact Austin Turner at (212) 336-3750 if you have any questions.

Sincerely,

[signature] for
Kevin Berry
District Director

DEC 19 2014
Date

Enclosure with EEOC
Form 161 (11/09)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you *receive* this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was *mailed* to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 – in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Brian Burke** **145 East 23rd Street** ***Apt. 4r*** **New York, NY 10010**	From: **New York District Office** **33 Whitehall Street** **5th Floor** **New York, NY 10004**

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
520-2015-00756	**Austin F. Turner, Investigator**	***(212) 336-3750***

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Kevin J. Berry [signature]

Kevin J. Berry,
District Director

DEC 19 2014
(Date Mailed)

Enclosures(s)

cc:

Attn: Eamonn Foley, Exec. General Counsel
NEW YORK CITY TRANSIT AUTHORITY
130 Livingston Street, 12th Floor
Brooklyn, NY 11201

NYS Workers' Compensation Board, Office of the Fraud Inspector General
100 Broadway-Menands, Albany, New York 12241

Employer Fraud Referral Form

To report an employer that you suspect is violating the workers' compensation coverage requirements, please complete this form. This information is confidential. *Required Fields

*Reason For Referral

- ☐ No workers' compensation coverage
- ☐ Employer is underreporting or concealing payroll
- ☐ Employer is misclassifying employees
- ☒ Other

Employer

*Name of Employer: New York City Transit Authority

*Street Address: 130 Livingston Street Address Line 2:

*City: Brooklyn State: NY Zip Code: 11201 Country: USA

Type of business: Public Transit

Number of workers: 50000

Do they do business under any other name? MTA, Metropolitan Transportation Authority, NYCTA, Department of Subways.

Fraud

Please be as specific as possible with information provided.

Some examples of alleged violations include:

1) Employer has 5 workers framing a house and the employer does not have workers' compensation.
2) Employer reports paying his/her workers $10.00 an hour to the insurance company or the employee leasing company, but also pays another $5.00 an hour in cash "off the books".
3) Employer is paying all or some individuals in cash "off the books".
4) Employer is an asbestos removal company but has reported all employees as clerical employees for workers' compensation premium classification purposes

*Describe alleged fraudulent activity:

Employer/Carrier knowingly and intentionally made a false and material statement to the Workers Compensation Board in order to successfully deny complainant his due benefits under law. Speaking by phone yesterday with WCB supervisor Sharon Thomas I was told that the NYCTA sent documents to the WCB purporting that the case G1278038 was a duplicate file to G1100520 (which is pending before the Board). The NYCTA knew this material fact was false and Ms. Thomas, assuming that carrier was acting in good faith, made an administrative decision to combine these two cases and cancel G1278038. The NYCTA was not acting in good faith but attempting to win a controverted case through subterfuge, fraud and perjury. The injury itself was wilfully caused by NYCTA Department of Law employees and others.

Attach additional information such as pictures, or documents. Add Attachment

Optional Information

Your Name: Brian Burke

Your Daytime Phone Number: 646-434-8513 Today's Date 5/20/2015

The Office of the Fraud Inspector General may contact you to clarify the information that was provided or to obtain additional information.

E-mail this form to IGFraudReferral@wcb.ny.gov by selecting the E-mail Form button or by saving the form and sending it as an attachment in an e-mail.

You may also report fraud to the Inspector General's Fraud Hotline, 1-888-363-6001.
Phone (518) 473-4839 Fax (518) 402-1059

Case 1:15-cv-01481-ENV-LB Document 31 Filed 10/24/16 Page 67 of 69 PageID #: 630

NYS Workers' Compensation Board, Office of the Fraud Inspector General
100 Broadway-Menands, Albany, New York 12241

Employer Fraud Referral Form

To report an employer that you suspect is violating the workers' compensation coverage requirements, please complete this form. This information is confidential. *Required Fields

*Reason For Referral

☐ No workers' compensation coverage

☐ Employer is underreporting or concealing payroll

☐ Employer is misclassifying employees

☒ Other

Employer

*Name of Employer: New York City Transit Authority

Street Address: 130 Livingston Street Address Line 2:

*City: Brooklyn State: NY Zip Code: 11201 Country: USA

Type of business: Public Transportation

Number of workers: 50000

Do they do business under any other name? MTA, Metropolitan Transportation, Authority, NYCTA, Department of Subways

Fraud

Please be as specific as possible with information provided.

Some examples of alleged violations include:

1) Employer has 5 workers framing a house and the employer does not have workers' compensation.
2) Employer reports paying his/her workers $10.00 an hour to the insurance company or the employee leasing company, but also pays another $5.00 an hour in cash "off the books".
3) Employer is paying all or some individuals in cash "off the books".
4) Employer is an asbestos removal company but has reported all employees as clerical employees for workers' compensation premium classification purposes

Describe alleged fraudulent activity:

The employer fraud occurred in case# G1100520 in a WCB hearing before Judge Patricia Harris on October 18, 2014 when the carrier/employer suborned the perjury of three supervisors, i.e. knowingly and intentionally made false material statements in order to successfully deny WC benefits to claimant. The relevant document in ecase is 235980365. While all statements by these three men denying their verbal and physical harassment of claimant while he was operating trains are perjury, this cannot be independently verified. This is the reason the carrier/employer chose to commit said acts while simultaneously endangering the public. Train Operators are affirmatively barred from having a person of their chose ride in the operating cab based on a presumption of a possibly fatal distraction. Train Operators are barred from using any electronic devise, including recording devices, while operating trains, for the same reason. Thus a moving train is the only place for the employer to successfully attack a whistle-blower, i.e. claimant, without witness or electronic corroboration. What can be independently verified is the subornation of perjury regarding where the supervisors stood during the attacks. One said at first he was standing 3 inches away during his attack, which was correct. After admonishment by carrier, he changed it to the coached, suborned perjury of three feet. Another stated he was standing one foot, then two then three feet away. The suborned "three feet" perjury met with the carriers approval. The other supervisor also stated he was three feet away. This is demonstrably and deliberately false. To stand three feet away from a seated Train Operator in a R68 transverse cab the supervisors would be blocked from viewing the track or signals which is their ostensible job and what they testified to be doing. QED perjury that was suborned. In addition, one supervisor stated that claimant could bar or remove them from the cab and another stated that claimant could not. Thus at least one was committing perjury on that point as well. Unfortunately, ALJ P. Harris accepted this suborned perjury as fact and ruled against claimant. Thus this subornation was certainly material and denied claimant his rightful benefits.

Optional Information

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FILED
2016 OCT 24 PM 9:35
CLERK
U.S. DISTRICT COURT
E.D.N.Y.

CAPTION:

BRIAN BURKE v.

NEW YORK CITY
TRANSIT AUTHORITY

CERTIFICATE OF SERVICE
Docket Number: 15-CV-1481(ENV)

I, BRIAN BURKE (name), hereby certify under penalty of perjury that on MONDAY, OCTOBER 24, 2016 (date), I served a copy of NOTICE OF APPEAL AND SECOND AMENDED COMPLAINT AND ATTACHMENTS
(list all documents)

by (select all applicable)*

- [x] United States Mail
- [ ] Federal Express
- [ ] Overnight Mail
- [ ] Facsimile
- [ ] E-mail
- [ ] Hand delivery

on the following parties (complete all information and add additional pages as necessary):

Name	Address	City	State	Zip Code
DANIEL CHIU	130 LIVINGSTON STREET	BROOKLYN	NY	11201
ROBERT BALIN	1251 Avenue of Americas	New York	NY	10020

Monday, October 24, 2016
Today's Date

[signature]
Signature

*If different methods of service have been used on different parties, please indicate on a separate page, the type of service used for each respective party.

Certificate of Service Form

FROM BRIAN BURKE
14 S EAST 23RD ST #4R
NEW YORK, NY 100D

USMS 955

TO CLERK OF THE COURT
EDNY PRO SE OFFICE

NOTICE OF APPEAL &
SECOND AMEND GD COMPLAINT &
AFFIRMATION OF SERVICE

15-CV-1481 (ENV)

Exhibit B

MTA New York City Transit

ON THE JOB INJURY FORM

Report Date: 04 / 17 / 14

NOTICE:
Employee & Supervisor: Department must call in employee injury within 24 hours of injury. (1-888-682-4301)
Complete this form upon occurrence of injury or recurrence of injury on duty and make three (3) photocopies.

Supervisor: Complete the Department Section on front side of form, Employee's Section if applicable, and Investigation Form on reverse side. FAX BOTH SIDES OF FORM TO Workers' Compensation Unit 718-694-3281/3807 and to System Safety (646) 252-5793. Send original within two business days to Workers' Comp., 130 Livingston Street, 10th floor. Send copy to the Dept. Injury Reporting Unit; and keep 1 copy.

MANAGER'S INVESTIGATION ATTACHED

* Employee: Complete Employee Section and Differential Application on front side of this report and keep 1 copy.

PLEASE PRINT – FULLY ANSWER ALL QUESTIONS AND BOTH SIDES OF FORM

MTA-NYCT ☒ MABSTOA ☐ UNION AFFILIATION: TWU LOCAL 100

EMPLOYEE'S SECTION (If employee is not available, Supervisor must fill out and sign form)

Name: Last BURKE First BRIAN M.I. T Pass/Payroll #: 006158 Soc. Sec. #:

Home Address (& Apt. #): 145 EAST 23RD ST. APT 4R Home Phone: (212) 614 8515 Date of Birth

City: NEW YORK State: NY Zip Code: 10010 Sex (M/F) MALE

Job Title TRAIN OPERATOR Title Code 650 Date of Hire 02/26/2001

Date Supervisor Notified: 04/17/14 Hrs Worked Day of Inj: 0 Hrs Worked Prior 7 Days: 32:20

Dept./Division: SUBWAY/B/RTS Resp. Ctr. #: 2374

Pre-Injury Work Status: Recurrence of Prior Injury? Date of Prior Injury: RDOs SS

Full: X Rest. __ No Work: __ Y: __ N: X Unknown: __

Hrs. of Duty: 1442-2134 Wages/Hr: 32 Work Hrs/Day: 8:05 Work Hrs/Week: 40:25 Scheduled Lunch: 1914-19:51

DESCRIBE INJURY

Inj. Date: 04/17/2014 Time: 14:30 AM (PM) (circle one) Date of Death (if applicable): / /

Location/Facility/Station/Building/Depot: STILLWELL ADMINISTRATION Area/Booth/Vehicle #/Track ST. ADM. County KINGS

What were you doing when injured or when injury recurred? REPORTING FOR DUTY

How did injury/exposure occur? ESCALATING HARASSMENT

What object or substance directly harmed the employee? NOTHING

Why did injury occur? DUE TO REPORTING SUBORDINATION

Nature of injury: (type of injury AND part of body) STRESS

Medical Treatment Requested? Y: __ N: X Received Workers' Comp. Statement of Rights? Y: X N: __

Received Injury on Duty Instruction Sheet? Y: X N: __

* Please be advised that in the event of a lost time injury greater than 30 days, (greater than 15 days for DOB employees), lost time relating to the on-the-job injury will be designated as leave usage under the Family Medical Leave Act (FMLA) if you are otherwise eligible. This notice does not constitute a waiver of any right that the Transit Authority has to controvert the claimed on-the-job injury.

Employee Signature: [signature] Date 04/17/14 Supv. Signature: __ (if employee fails to sign)

DIFFERENTIAL APPLICATION

Employee must sign Differential Application to begin processing. Signature does not denote agreement with Supervisor's Report nor Workers' Compensation determinations of eligibility.

I understand that, in making this application for Differential Benefit, I have agreed that the Authority may seek to recoup the value of Differential Benefits paid from any judgment or settlement of an action against third parties I may institute as a result of this Injury.

I hereby apply for payment of differential

Employee's Name (please print) B BURKE Employee's Signature [signature] Date 04/17/14

DEPARTMENT SECTION

TELEPHONIC CONTROL # 14-1513

DATE REPORT TO MAC FOR DRUG/ALCOHOL TESTING: / /

Was injury observed?: Y: __ N: ✓

RULE COMPLIANCE: At time of injury was employee:

If yes, was it job related?: Y: __ N: __ Unk: ✓

Performing assigned duties? Y: __ N: __

Date Stopped work: 04/17/14

Has injured returned to work? Y __ :N: __ Return to work date: / /

WAIVER & ELECTION REQUESTED: Y: ✓ N: __ If yes, employee must complete Waiver & Election Form.

Supervisor Name: R Greaves Supv. Signature R. Greaves Date 04/17/14 Phone 347-643-5535

Effective 3/2009

ON THE JOB INJURY INVESTIGATION FORM

RESPONSE INJURED EMPLOYEE NAME: B. Burke PASS NUMBER: 006158

INJURY INFORMATION

FIRST AID RENDERED: ☐yes ☑no Detail: ______ FIRST AT THE INJURY SCENE: N/A

AREA SECURED/IMMEDIATE HAZARD ELIMINATED: ☐yes Time: ______ (no) Why: N/A

IF TREATMENT GIVEN AWAY FROM WORKSITE, WHERE WAS IT GIVEN? FACILITY: N/A

ADDRESS: ______ City ______ State ____ Zip Code ______

TREATED IN E/R?: ☐es ☑no HOSPITALIZED OVERNIGHT?: ☐yes ☐no

NAME OF PHYSICIAN OR OTHER HEALTH CARE PROFESSIONAL: N/A

FACT-FINDING

WITNESS INFORMATION

INJURED EMPLOYEE INTERVIEWED: ☑yes Date: 04/17/14 ☐no Why: ______

NAME, PASS NUMBER, JOB TITLE OF ALL WITNESSES:

N/A DATE INTERVIEWED: ______

DATE INTERVIEWED: ______

INJURY SCENE INFORMATION

LOCATION DETAIL: Train – work/passenger/other N/A # N/A Yard N/A Tower N/A Track # N/A Station N/A Shop N/A

Bus – passenger/other N/A Bus # N/A Depot N/A Storeroom # N/A Street N/A Vehicle # N/A

Other STL CRC

PHOTOGRAPH TAKEN: ☐yes ☑no Why? N/A SKETCH MADE: ☐yes ☑no Why? N/A

DETAIL OF INJURY SCENE:

LIGHTING CONDITIONS: ☑good ☐poor ☐other ______ WEATHER: ☑clear ☐cloudy ☐rain ☐snow ☐ other ______

STRUCTURAL ELEMENTS (hole in floor, chipped stair, missing handrail, etc.) ☐good ☐poor Detail: N/A

HOUSEKEEPING: ☐good ☐poor Detail: N/A OTHER: ______

EQUIPMENT/MACHINE/TOOL INVOLVED

NAME (include identification number if applicable) N/A CONDITION: ☐good ☐poor OTHER: ______

ANALYSIS

PEOPLE/PROCEDURES

POLICY/PROCEDURE APPLICABLE: ☐yes ☑no FOLLOWED: ☐yes ☑no

TRAINING REQUIRED: ☐yes ☑no COMPLETED: ☐yes ☑no

PERSONAL PROTECTIVE EQUIPMENT REQUIRED: ☐yes ☑no IN USE: ☐yes ☑no

CONDITION OF PPE: ☐good ☐poor Detail N/A OTHER: ______

EQUIPMENT

FAILURE: ☐yes ☑no CAUSE OF FAILURE: IMPROPER OPERATION: N/A LACK OF MAINTENANCE: N/A OTHER: N/A

MACHINE/TOOL USED CORRECTLY: ☐yes ☐no INSPECTION REQUIRED: ☐yes ☐no LAST INSPECTION: ______

SAFEGUARDS REQUIRED: ☐yes ☐no IN PLACE: ☐yes ☐no IN USE: ☐yes ☐no

MATERIAL

EXPOSED TO: N/A CONTACT WITH N/A USED CORRECTLY: ☐yes ☐no

SAFEGUARDS REQUIRED: ☐yes ☐no IN PLACE: ☐yes ☐no IN USE: ☐yes ☐no

ENVIRONMENT

HEAT RELATED: ☐yes ☑no COLD RELATED: ☐yes ☑no OTHER: ☐yes ☐no ______

SAFEGUARDS REQUIRED: ☐yes ☐no IN PLACE: ☐yes ☐no IN USE: ☐yes ☐no

MISCELLANEOUS CONTRIBUTING FACTORS

OTHER EMPLOYEES: ______ INJURED EMPLOYEE DISTRACTED: ______ DRUG/ALCOHOL: ______ OTHER: ______

ROOT CAUSE OF INJURY (Why did injury/exposure occur?)

un known

RECOMMENDATIONS

ACTION PLAN TO PREVENT RECURRENCE (What can be done to prevent another similar injury?)

There is no Action Plan. This matter was referred to Labor Relations

ACTION PLAN IMPLEMENTED: ☐yes ☐no DATE: ______ COMPLETED: ☐yes ☐no DATE: ______

COMMUNICATED RESULTS AND RECOMMENDATIONS

EMPLOYEES: ☐yes ☐no DATE: ______ OTHER DIVISIONS: ☐yes ☑no DATE: ______

ILLNESS CASES ONLY: Check this box → ☐← if the employee independently and voluntarily requests that his or her name not be entered of the log. If checked, treat as a privacy concern case.

INVESTIGATOR NAME: R. Greaves SIGNATURE: R. Greaves PASS # 002833

LOCATION MANAGER: NAME: John Icart (Please print) SIGNATURE: John Icart

PASS # 424340 (Please print) PHONE # 212-712-3704/05 REV: 5/25/07

Effective 3/2009

COPY

New York City Transit Authority
TWU, ATU EMPLOYEES

WAIVER AND ELECTION

REQUEST FOR PAYMENT WHILE ABSENT DUE TO SERVICE CONNECTED DISABILITY

I, B. BURKE, request eight hours pay for each work day I am absent due to a service connected injury. Such payment shall begin with the first work day of absence and will be charged against my accrued sick leave☒ and/or vacation time☐ (*check one or both*) and will continue if eligible for maximum 20 days until I return to work, whichever comes first. I understand that, in making this request, I am waiving any rights which I might otherwise have to use such accrued time for other reasons. I understand that I must provide medical documentation from my treatment provider pursuant to the Workers' Compensation Law and, if I do not provide such information and do not certify my absence through providing a sick leave application/doctor's certification, benefits paid to me through this waiver and election will be recouped.

Date 04/17/2014 Signed [signature]

Pass 006158 Title TO

Department DOS / RTO

Date of Accident 04/17/2014

Date of Initial Absence 04/17/2014

To be completed by Department/Division:

The Workers Compensation Division has indicated that this case is

*Controverted *Non-Controverted per ________________(name) on ________(date).

Sick Leave Balance ________________ Annual Leave Balance ________________

Payroll payment commenced ________________

Department will submit a copy of this form to Timekeeping, Payroll and the Workers' Compensation Division *immediately* upon completion of this section. If the * information is not available complete the remaining portion and transmit as indicated.

Print Name: ________________ **Title:** ________________

Authorized Signature ________________ **Date** ________ **Phone #** ________________

Upon return to duty or exhaustion of leave credits, department shall complete and submit a copy of this form to the Workers Compensation Division:

Date returned to duty ________________ Date leave credits exhausted ________________

Leave Used: ________ Sick Leave Days ________ Vacation Days (insert number of days)

Amount paid: $ ________________

Print Name: ________________ **Title:** ________________

Authorized Signature ________________ **Date** ________ **Phone #** ________________

Workers Compensation Division shall complete and send to employee's department and Payroll:

Workers Compensation paid at $__________/week for __________ to __________.

Workers Compensation paid at $__________/week for __________ to __________.

Differential pay should be granted for __________ to __________.

Authorized Signature ________________ **Date** ________ **Phone #** ________________

Department to complete and file:

Based on above award(s), employee is entitled to be credited with

__________ sick leave and/or __________ vacation days.

Print Name: ________________ **Title:** ________________

Authorized Signature ________________ **Date** ________ **Phone #** ________________

NEW YORK CITY TRANSIT
ON THE JOB INJURY MANAGEMENT FOLLOW-UP FORM

Employee Name: BRIAN BURKE
Title: TRAIN OPERATOR
Pass Number: 006158
Department/Division: DOS / B
Division RC: 2374
Work Location: STL
Telephone:
Fax Number:

Manager Name: John Icart
Title: Superintendent
Pass Number: 424940
Department/Division: RTO 'B'

Date of injury: APRIL 17, 2014
Description of injury STRESS

Action Taken:
☐ Emergency Room
Hospital:
Address:
Telephone:
Physician:
☐ Medical Assessment Center (MAC); or
☐ Independent Medical Examiner (IME)
Location:
Physician:
Telephone:

☐ Personal Physician
Name:
Address:
Telephone:
Other, explain:

Employee condition: Alert, responsive. Employee not in physical discomfort

☐ Non- work related condition identified, explain:

Can employee work the following day? ☐ Yes ☑ No
If No, when can employee return to work?
If return date is unknown, when is employee's next evaluation?

☐ Contact day of employee: 4-18-14
☐ Full duty: perform routine tasks
☐ Restricted, explain:

☐ Restricted work available
☐ Restricted work unavailable
☐ Return to full work
☐ Employee failed to report to full work
☐ Employee failed to keep MAC/IME visit

Date:
Date:
Date:

Manager's Signature [signature]

Date 4-17-14

New York City Transit
rev. 08/03/10

Memorandum

New York City Transit

Date: April 21, 2014

To: Wanda Manley, Director, Employee Safety and Rules Compliance, DOS

From: Christopher Basile, "C/H" Line Superintendent

Re: **Train Operator Brian Burke # 006158 Request for Re-Assessment of IOD**

I am requesting the following employee's claim of injury to be re-assessed. The employee and pertinent facts are listed below:

Train Operator Brian Burke # 006158

On Thursday, April 17, 2014, T/O Brian Burke # 006158 reported for his assignment (D 317) at the Stillwell Avenue Crew Reporting Center and stated to Assistant Train Dispatcher Gordon Anderson # 014982 that he was unable to operate his train due to "Stress", and he requested to file an Injury on Duty Form. T/O Burke further asked that he be sent for drug testing and additionally requested to file a Safety Rule Dispute Resolution Form. Superintendent Icart instructed Train Service Supervisor R. Greaves # 007833 to escort T/O Burke to Medical Assessment Center # 1 to complete ability to perform testing. It should be noted that T.W.U. Representative Sullivan was notified of this incident and conferred via phone with T/O Burke for 15 minutes prior to management's interview with him. During the interview conducted by Superintendent John Icart, and Superintendent Harry Hernandez, at the 'A' line Superintendents Office, T/O Burke reported that he requested to file an IOD package because he felt "Stress" due to what he described as "Escalating Harassment" on the part of New York City Transit and as a result, he would not be able to work the following day on Friday April 18. T/O Burke additionally requested to file a Safety Rule Dispute Resolution Form stating the rule or standard being violated was "Escalating Harassment" orchestrated by Department of Law Employees. It should be noted at the conclusion of this interview T/O Burke was directed by Superintendent Icart to report to the Office of Labor Relations at 8 AM on Friday, April 18. On this date line management received correspondence from Leonard Akselrod, Director of Labor Relations reporting that T/O Burke was being carried Code # 22 effective 4/18/2014 and would be sent to the Safety Unit. Special instructions further issued stated that T/O Burke is restricted to platform duty pending investigation and toxicology results. T/O Burke then reported to the Safety Unit and was interviewed by Wanda Manley. Ms. Manley distributed correspondence following her interview stating that on **Tuesday, April 15, 2014**, T/O Brian Burke experienced an incident at 205 Street while operating the 1951 D STL/205 at 2130 hours. This incident was not described in this distribution letter and only states that T/O Burke should be carried code # 22 effective Friday, April 18, 2014, until further notice.

This reassessment request is based on the following:

- According to "Injury On Duty Guidelines" currently posted on TENS OSS page, an IOD is described as any injury or illness related to work while in /on agency property and while on duty; **Psychological stress or anxiety claims related to work directions, evaluations, or discipline procedures are not considered an IOD**

- T/O Burke reported his IOD was the result of "Stress" and has filed a Safety Rule Dispute Resolution Form. **Based on T/O Burke's statements, line management deems that no safety rule was violated and offers no response.**

The following supervisors / managers will be available to testify at a compensation hearing, should it be necessary:

- Superintendent John Icart RDO S/M (212) 712-3704/3705
- Superintendent Darpan Telwala RDO F/S (212) 712-3704 / 3705
- ATD Gordon Anderson (347) 643-5464 / 5465
- TSS Robert Greaves (718) 430-8293

Thank you for your assistance in this matter,

Christopher Basile

Acting General Superintendent, District # 4
Office: 718-927-8724 / 8725

Attachments included

Cc: B. Greenblatt
P. Callahan
A. Jeffries
A. Ricketts
M. Collington
L. Akselrod

Exhibit C

New York City Transit

January 20, 2015

Brian Burke, 006158
145 East 23rd Street Apt.4r
New York NY, 10010

RE: **Notice of Intent to Terminate, Eligibility for Reclassification**
Civil Service Law §73 Medical Disability
Certified Return Receipts # 7005-3110-0002-4400-8122
Regular Mail

Dear Train Operator (Rev.Vehicles) Brian Burke:

Our records indicate that you have been absent and/or unable to perform the duties of your position due to a non-service connected illness/injury since 4/18/2014. Therefore, pursuant to §73 Civil Service Law, MTA-New York City Transit intends to terminate your employment effective 4/18/2015. You should be aware that as an employee you may be eligible for disability or service retirement benefits which may be affected by this termination.

You may be eligible for reclassification to another title. If you elect this option, you will be given a leave of absence for up to six months in order to complete a scheduled reclassification medical examination. If you do not elect this option, your employment will be considered terminated effective 4/18/2015. Please be advised that during this Reclassification Leave, you will not be eligible for continuation of any benefits. **Please note that Cleaner titles are not eligible for reclassification.**

If terminated from service, any right to reinstatement is determined by §73 of the NYS Civil Service Law and/or the relevant Policy/Instruction. Under those provisions, you may apply for a medical examination to permit consideration for reinstatement to your job, not later than one year after the date of your termination due to disability, to the extent that you are able to perform the essential duties of your position with or without a reasonable accommodation.

If certified to be physically and mentally fit to perform the duties of your former position, with or without a reasonable accommodation, you will be reinstated to your former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which you were eligible for transfer. If no appropriate vacancy exists to which reinstatement may be made, or if the workload does not warrant the filling of such vacancy, your name will be placed on a preferred list for your former position, and you shall be eligible for reinstatement from such preferred list for a period of four years. In the event that you are reinstated to a position in a grade lower than that of your former position, your name will be placed on the preferred eligible list for your former position or any similar position.

Please sign this form, **indicating your decision and return it forthwith** to *Subways Sick Unit, 130 Livingston Street, 6th FL, Brooklyn, NY 11201* by 1/30/2015. Failure to return this form within the prescribed time frame will be deemed to represent a declination of the offer to participate in the reclassification process and will result in your termination as described above.

For retirement procedures and application forms, please contact your union representative or the New York City Employees Retirement System, 340 Jay St, Brooklyn, New York 11201 or call (347) 643-3000.

Sincerely,

Subways Administration, Sick Leave Unit
130 Livingston Street, 6th Floor
Brooklyn NY, 11201
(718) 694 – 5322
SubwaysSickUnit@nyct.com

I, Train Operator (Rev.Vehicles) Brian Burke, have read and understand the offer in this letter and:

- [x] **I am requesting to be reclassified**
- [ ] **I decline to be reclassified**

[signature] 006158 01/30/15

Signature Pass # Date

cc: D Line
Employee File

Exhibit D

MTA New York City Transit

Reclassification Consideration Request Due to a Disability

Name: BRIAN BURKE Pass# 006158
(Print Name)

I am aware that I am being offered a position as a STATION AGENT in the department of STATIONS. This may or may not affect my seniority and or picking rights.

[signature] 006158
Employee Signature /Pass #

03/11/2015
Date

(RJ 2013)

MTA New York City Transit

Equal Opportunity Employer

Reclassification Consideration Request Due to a Disability

Name: BRIAN BURKE Pass# 006158
(Print Name)

I hereby request to be considered for reclassification from my current title due to a disability.

My current title is: TRAIN OPERATOR
(Current title)

I am aware that in order to be reclassified:

- I will be required to resign from my present title.
- I will be required to serve a probationary period of one year in the new title, subject to automatic extension for absences.

[signature] 03/13/2015
Employee Signature **Date**

[signature] 3/13/15
Witness Signature **Date**

Lorraine Hinson Comp Assoc II 3/13/15
Witness Name/Title (Please print) **Date**

Exhibit E

Telephonic # 15-0491	ON THE JOB INJURY FORM page 1of 4	Report Date 04/06/15

Department must call in employee injury within 24 hours of injury (1-888-682-4301)

Injured Employee	1. Complete PART A - Employee Section and Differential Application upon occurrence of injury or recurrence of injury on duty 2. Make three (3) photocopies and keep one (1) copy
Supervisor	1. Complete PART A - Employee Section if employee is not available 2. Complete PART B - Department Section 3. Fax form within 24 hours to Workers' Comp Unit (718-694-3281/3807) 4. Send original form within 2 business days to Workers' Comp Unit, 130 Livingston, 10th fl. 5. *Department of Subways only* - Send form within 2 business days to IOD Unit, 130 Livingston, 6th fl. 6. *Department of Buses only* – Send form within 2 business days to DOB Safety, 25 Jamaica Avenue, Rm. 28H

PLEASE PRINT – FULLY ANSWER ALL QUESTIONS

EMPLOYEE'S AGENCY: MTA __ NYCTA ✓ MABSTOA __ SIRTOA __ UNION AFFILIATION: ______

PART A - EMPLOYEE SECTION

(If employee is not available, Supervisor must complete this section and sign form)

Name: Last BURKE First BRIAN M.I. T

Pass# 006158 BSC# 1195069 Date of Birth ____ Soc. Sec.# XXX-XX-____

Home Address (& Apt. #) 145 EAST 23RD ST #4R City NEW YORK State NY

Zip Code 10010 Gender (M/F) M Home Phone # 646-484-8513 Cell Phone # 646-484-8513

Home Email Address briantburkeegmail.com Job Title STATION AGENT Title Code 813 Date of Hire 01/16/01

Dept./Division STATIONS RCN # 2345 Work Location PS248

Name of Supervisor Pamela PARKER Total Hrs. Worked 7 Days Prior to Injury 43

Work Status at Time of Injury: Full ✓ Restricted __ Tour / Hrs. of Duty: From 0700 (AM/PM) To 1500 (AM/PM)

Wages/Hr: 33 Scheduled Lunch: From ____ (AM/PM) To ____ (AM/PM) RDOs S/S

DESCRIBE INJURY:

Date of injury 04/06/2015 Time of day employee began work on date of injury: 0700 (AM/PM)

Time of injury: 0730 (AM/PM) Date of Death (*if applicable*) __/__/__

Recurrence of Prior Injury? Y __ N X Date of Prior Injury __/__/__

Location of Injury: County KINGS

☐ Train: # Yard Tower ____ Track # ____ Station ____ Shop ____

☐ Bus: # ____ Depot ____ Storeroom # ____ Street ____ Vehicle # ____

☒ Other: (*give exact address*) FIRE SCHOOL CITY SAFETY TRAINING SCHOOL

Effective 10/10/2014

Telephonic # 15-09741	ON THE JOB INJURY FORM page 2 of 4	Report Date 04/06/15

Injured Employee's Name BRIAN BURKE *Pass#* 006158

Describe in detail how the injury occurred. Indicate what you were doing at the time of the incident. Name the object, substance or condition which directly caused the injury. *(Attach an additional sheet(s) if necessary)*

PANIC ATTACK, PTSD, INSOMNIA, SHAKING, ANXIETY CAUSED BY DEPARTMENT OF LAW CAMPAIGN OF HARASSMENT, SEE ATTACHED HIT PIECE IN NY POST DISSEMINATED THROUGH SYSTEM.

Type of Injury *(burn, cut, fracture)* SEE ABOVE

Body part(s) affected *(right leg, left arm, head)* HEAD, BODY

Medical Treatment Requested? Y ✓ N___ Date Notified Supervisor: 04/06/15

Received Workers' Comp Statement of Rights? Y ✓ N___

Received Injury on Duty Instruction Sheet? Y ✓ N___

I declare under penalty of perjury, under the laws of the State of New York, that all statements contained in this On-the-Job-Injury form and any accompanying documents are true and correct, with full knowledge that all statements made herein are subject to investigation and that any false or dishonest answer to any question may be grounds for disciplinary action.

Employee Signature: [signature] Date 04/06/15

Supervisor Signature: ______________ **(if employee fails to sign)** Date ___/___/___

FAMILY MEDICAL LEAVE ACT (FMLA)

Please be advised that in the event of a lost time injury greater than 30 days, lost time relating to the on-the-job injury will be designated as leave usage under the Family Medical Leave Act (FMLA) if you are otherwise eligible. This notice does not constitute a waiver of any right that the Transit Authority has to controvert the claimed on-the-job injury.

DIFFERENTIAL APPLICATION

Employee must sign Differential Application to begin processing. Signature does not denote agreement with Supervisor's Report nor Workers' Compensation determinations of eligibility. I understand that, in making this application for Differential Benefit, I have agreed that the Authority may seek to recoup the value of Differential Benefits paid from any judgment or settlement of an action against third parties I may institute as a result of this Injury. I hereby apply for payment of differential.

Employee's Name (please print) BRIAN BURKE

Employee's Signature: [signature] Date 04/06/15

WAIVER & ELECTION

Requesting Waiver & Election? Y X N___ If yes, Employee must complete Waiver & Election Form, and Department must submit the form within 2 business days.

REQUEST VACATION DAYS INSTEAD OF SICK DAYS

Effective 10/10/2014

Telephonic # 15-0971	**ON THE JOB INJURY FORM** page 3 of 4	Report Date 04/06/2015

PART B - DEPARTMENT SECTION
(Supervisor must complete this section and sign form)

Injured Employee's Name Brian Burke *Pass#* 006158

Supervisor's Name: Last Parker First Pamela M.I. G

Pass# 679294 BSC# 1048016 Work Location Coney Island Yard

Work Phone Number 718-694-5019 Cell Phone Number ______

INJURY INFORMATION

Did you observe the injury? Y ___ N ✓ If no, Who reported the injury to you? Brian Burke

Describe in detail your knowledge of how the injury occurred. *(Attach an additional sheet(s) if necessary)*

Employee stated he had insomnia over the weekend and today he was feeling stressed, anxiety with a panic attack while waiting for classroom instructions.

At the time of the injury was the employee performing job-related assigned duties? Y ✓ N ___ Unknown ___

Was the employee working approved overtime? Y ~~✓~~ N ✓ Unknown ___

Did the employee appear fit for duty? Y ✓ N ___ Unknown ___ If not, explain: ______

Did the employee stop working? Y ✓ N ___ Date Stopped Work: 04/06/2015

Has the employee returned to work? Y ___ N ✓ Return to work date: __/__/__

Date the employee reported to MAC for Drug/Alcohol Testing: __/__/__

RESPONSE TO INJURY

Was first aid given? Y ___ N ✓ If yes, describe the type of first aid: ______

Who was first at the injury scene? Name: Pamela G. Parker Phone Number 718 694-5019

Area secured/immediate hazard eliminated?

Y ✓ Time: ____ (AM/PM) N ___ If not, why? ______

If treatment given away from worksite, where was it given? Name of Facility PRIVATE DOCTOR

Address 110 Livingston ST City Brooklyn State NY Zip Code 11201

Was the employee transported by ambulance? Y ___ N ✓ Treated in E/R? Y ___ N ✓ Hospitalized? Y ___ N ✓

Name of doctor or health care professional: Dr. Hearns Badge # *(if applicable)* ______

Telephonic # 15-0971	ON THE JOB INJURY FORM page 4 of 4	Report Date 04/06/2015

Injured Employee's Name BRIAN BURKE Pass# 006158

FACT-FINDING

Did you speak to the injured employee? Y ✓ N__ If yes, Date: 4/6/2015

Did anyone observe the injury or speak to or assist the employee? Y ✓ N __ Unknown __ If yes, List:

Name M. NURSE Title MIS II Pass# 657413 Phone # 718-714-7619

Name L. KEETON Title TSS Pass# 462489 Phone # 718-714-7896

Name HORACE BRIGGS Title CIA Pass# 099288 Phone # 718 714 3219

☐ Photograph ☐ Sketch ☐ Video If checked, by whom? Name: ________ Date: __/__/__

ROOT CAUSE ANALYSIS: (Why did it happen? What actually caused the injury or incident?)

Was an object (e.g., equipment, tool) involved in the injury? Y __ N ✓ If yes, what? ________

Was the equipment/tool defective or used improperly? Y__ N ✓ If yes, explain ________

Was a chemical or air contaminant involved? Y__ N ✓ If yes, what? ________

Did the employee follow the policies or procedures for the tasks being performed at the time of the injury? Y ✓ N__

If no, please explain ________

Did the employee receive required training? Y__ N__ Unknown ✓

Was required Personal Protective Equipment (PPE) used? Y ✓ N__

Did the employee's actions (e.g., horseplay, distracted, drug or alcohol use) contribute to the injury? Y __ N ✓

If yes, please explain ________

Were there any conditions (e.g., poor housekeeping, insufficient lighting, weather (snow, rain, heat, cold), defects in walking/working surface) that contributed to the injury? Y __ N ✓

If yes, explain ________

Based on the above ROOT CAUSE ANALYSIS, what was the root cause of this incident? UNKNOWN

Does this incident require additional investigation? Y __ N ✓ If yes, please explain. *(Attach additional sheets if needed)*

____

RECOMMENDATIONS TO PREVENT RECURRENCE (What can be done to prevent another similar injury?)

____

Supervisor Signature: [signature] Date 04/06/2015

Location Manager Name: EDWIN HALL-CLARKE Signature: [signature] Pass # 356141

Effective 10/10/2014

New York City Transit Authority
TWU, ATU EMPLOYEES

WAIVER AND ELECTION

REQUEST FOR PAYMENT WHILE ABSENT DUE TO SERVICE CONNECTED DISABILITY

I, BRIAN BURKE, request eight hours pay for each work day I am absent due to a service connected injury. Such payment shall begin with the first work day of absence and will be charged against my accrued sick leave☐ and/or vacation time☒ (*check one or both*) and will continue if eligible for maximum 20 days until I return to work, whichever comes first. I understand that, in making this request, I am waiving any rights which I might otherwise have to use such accrued time for other reasons. I understand that I must provide medical documentation from my treatment provider pursuant to the Workers' Compensation Law and, if I do not provide such information and do not certify my absence through providing a sick leave application/doctor's certification, benefits paid to me through this waiver and election will be recouped.

Date 04/06/15

Signed [signature]

Pass 006158 Title STATION AGENT

Department STATIONS

Date of Accident 04/06/15

Date of Initial Absence 04/06/15

To be completed by Department/Division:

The Workers Compensation Division has indicated that this case is

*Controverted *Non-Controverted per ________________(name) on ________(date).

Sick Leave Balance ________________ Annual Leave Balance ______________

Payroll payment commenced ______________

Department will submit a copy of this form to Timekeeping, Payroll and the Workers' Compensation Division *immediately* upon completion of this section. If the * information is not available complete the remaining portion and transmit as indicated.

Print Name: ______________________________ **Title:** ______________________________

Authorized Signature______________________ **Date**________ **Phone #**______________

Upon return to duty or exhaustion of leave credits, department shall complete and submit a copy of this form to the Workers Compensation Division:

Date returned to duty ______________ Date leave credits exhausted ______________

Leave Used: __________ Sick Leave Days __________ Vacation Days (insert number of days)

Amount paid: $______________

Print Name: ______________________________ **Title:** ______________________________

Authorized Signature______________________ **Date**________ **Phone #**______________

Workers Compensation Division shall complete and send to employee's department and Payroll:

Workers Compensation paid at $__________/week for __________ to __________.

Workers Compensation paid at $__________/week for __________ to __________.

Differential pay should be granted for ______________ to ______________.

Authorized Signature______________________ **Date**________ **Phone #**______________

Department to complete and file:

Based on above award(s), employee is entitled to be credited with

__________ sick leave and/or __________ vacation days.

Print Name: ______________________________ **Title:** ______________________________

Authorized Signature______________________ **Date**________ **Phone #**______________

NEW YORK CITY TRANSIT
ON THE JOB INJURY MANAGEMENT FOLLOW-UP FORM

Employee Name: Brian Burke
Title: Station Agent student
Pass Number: 006158
Department/Division: DOS/ STATIONS
Division RC: 2345
Work Location: CI YD
Telephone: 718 714 7619
Fax Number:

Manager Name: Richard DeVanlo
Title: Director
Pass Number: 212972
Department/Division: DOS / OT

Date of Injury: 4/6/15
Description of Injury: STUDENT CLAIMS Mental Anguish from seeing a news article

Action Taken:

☐ Emergency Room
Hospital:
Address:
Telephone:
Physician:

☒ Personal Physician
Name: Dr. Hegens
Address: 110 Livingston street Brooklyn NY 11201
Telephone: unknown

☐ Medical Assessment Center (MAC), or
☐ Independent Medical Examiner (IME)
Location:
Physician:
Telephone:

Other, explain:

Employee condition: unknown / left work unassisted, only wanted to go alone to see his private doctor

☐ Non- work related condition identified, explain:

Can employee work the following day? ☐ Yes ☒ No
If No, when can employee return to work? after MAC has completed exam
If return date is unknown, when is employee's next evaluation? TBD

☐ Contact day of employee:
☐ Full duty: perform routine tasks
☒ Restricted, explain: need to determine mental state mind. Must be sure employee maintains a safe mindset.

☐ Restricted work available
☒ Restricted work unavailable
☐ Return to full work — Date:
☐ Employee failed to report to full work — Date:
☐ Employee failed to keep MAC/IME visit — Date:

Manager's Signature [signature]

Date 4/6/15

New York City Transit
rev. 06/08/10

MTA New York City Transit

CORRESPONDENCE SHEET

9:00 AM / PM 2015 (2014 corrected to 15)

From Name: BRIAN BURKE Title: STATION AGENT Pass Number: 006158

Line: Time: Day of Week: MONDAY Date: 04/06/15 Minutes Detention:

To:

Subject: AT 07:30 AM CITY FIRE SCHOOL I REQUESTED AN JOD FORM FOR AN INJURY CAUSED BY CAMPAIGN OF DEFAMATION AND HARASSMENT BY KRISTEN NOLAN, ESQ, AN ATTORNEY FOR NYCTA DEPARTMENT OF LAW.

Signature: [signature]

DO NOT WRITE IN THIS SPACE

New York Post, Sunday, March 29, 2015

'Satanic MTA out to kill'

Train kook's claim

By KATHIANNE BONIELLO

It's the D train, as in devil.

A train operator of 14 years has filed a lawsuit against the MTA alleging it engaged in "satanic terroristic criminality" by sending bosses to "terrorize" and "assault" him.

Brian Burke, 53, who was demoted last year to station-agent trainee, claims in the suit that the MTA intended to "endanger every soul on the train and on the track" in April 2014 when its inspectors entered his train to see whether he was wearing corrective lenses.

The Manhattan man, who filed the suit in Brooklyn federal court last week without a lawyer, has railed against his bosses before.

He has filed suits and claims against the MTA and the Census Bureau, arguing they discriminated against him because he is white, Irish, Catholic and "photophobic," or sensitive to light.

In the latest suit, he says the MTA is trying to kill him, in part, because he griped when ordered not to wear baseball caps and to clean moldy food from a break-room refrigerator.

"I believe I may be in mortal danger," Burke writes, likening himself to the Rev. Al Sharpton, who claimed to have been an FBI informant against the mob.

"Rev. Sharpton was accused of 'ratting out the mob' and I maybe [sic] justly accused of 'ratting out the MTA.' I believe the MTA may be more dangerous. There is [sic] 600 volts, high structure, 600-ton trains and an infinite way to be murdered or 'suicided.'"

Transit sources say his previous wacky claims have been shot down by courts or the Public Employee Relations Board. The board rejected his claim that he was assaulted by a boss in 2007.

Burke had refused to remove his tinted glasses at a 2014 PERB hearing, prompting supervisors to check on him last April, a source said.

He was making $71,000 a year as an operator, but when he failed in his bid to get worker's comp for the April "assault," the MTA gave him a choice — quit or get off the gravy train, a source said.

Burke is now training to be a station agent, a job with an annual salary of $54,000.

He has called the MTA "The Invisible Empire" and compared it to the KKK.

He tried suing the Census after it laid him off in 2000, but a court tossed the case.

Burke's latest suit seeks back pay and unspecified damages.

Exhibit F

130 Livingston Street
Brooklyn, NY 11201

Veronique Hakim
President

New York City Transit

May 5, 2016

Mr. Brian Burke
145 East 23rd Street/Apt 4R
New York, NY 10010

Re: Termination of Probation

Dear Mr. Burke:

This is to inform you that your employment as a Station Agent with New York City Transit has been terminated due to an unsatisfactory probationary period. The effective date of termination is May 7, 2016.

You are required to turn in all Transit issued equipment immediately if you have not already done so.

Sincerely,

M. F. DaCosta

Monica F. DaCosta
Chief Officer
Operations Training

Exhibit G

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BRIAN BURKE,

Charging Party,

- and -

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

CASE NO. U-34459

MTA NYC TRANSIT
2016 JUL 19 A 11:36
LAW DEPARTMENT
GENERAL LAW CONTRACTS

BRIAN BURKE, *pro se*

JAMES B. HENLY, GENERAL COUNSEL (KRISTEN NOLAN, ESQ. of counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by Brian Burke to a decision of an Administrative Law Judge (ALJ) dismissing his improper practice charge against his employer, New York City Transit Authority (NYCTA).[1] Based on the allegations in the amended charge, discussions at a pre-hearing conference, and an offer of proof that Burke filed in support of his allegations, the ALJ held that Burke's allegations, if proved, would not establish a *prima facie* violation of §§ 209-a.1 (a) and (c) of the Public Employees' Fair Employment Act (Act).

Burke alleges in his exceptions that the ALJ mischaracterized the facts in his offer of proof and erroneously concluded that those facts failed to reveal a *prima facie* violation of the Act. NYCTA filed a response in support of the ALJ's description of the facts and her conclusion of law. Burke filed a reply to NYCTA's response, without seeking authorization to do so under § 213.3 of our Rules of Procedure (Rules).[2] Because Burke did not seek permission to file a reply, and because NYCTA's response to Burke's exceptions did not raise material issues for the first time as to warrant the filing of a reply, we do not address or consider the allegations in his reply.[3] For the reasons given below, we affirm the ALJ's decision.

---

[1] 48 PERB ¶ 4604 (2015).

PROCEDURAL HISTORY AND RELEVANT FACTS

Burke's amended improper practice charge alleges that NYCTA violated §§209-a.1 (a) and (c)[4] of the Act by comments made in a newspaper article and by withholding his wages, sick leave, vacation time, and overtime. NYCTA filed an answer denying that it violated the Act and asserting a number of defenses. At a pre-hearing conference, after Burke's statement of his case, NYCTA moved to dismiss the charge for its failure to present a *prima facie* claim. Following the conference, Burke filed an offer of proof in support of his charge and a brief in opposition to NYCTA's motion. NYCTA filed a brief in support of its motion.

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[2] "No pleading other than exceptions, cross-exceptions or a response thereto will be accepted or considered by the board unless it is requested by the board or filed with the board's authorization. Such additional pleadings will not be requested or authorized by the board unless the preceding pleading properly raises issues which are material to the disposition of the matter for the first time. If any additional pleading is requested or authorized by the board, the board shall notify the parties regarding the conditions under which that pleading will be permitted."

[3] *Id.*

[4] A claim under §209-a.1(d) of the Act was not processed based on lack of standing. Because Burke did not except to that portion of the ALJ's decision, any objection to that ruling has been waived and is not properly before us. *City University of New York*, 48 PERB ¶ 3021, 3071 (2015) (citing Rules § 213.2 (b) (4)); *Village of Endicott*, 47 PERB ¶ 3017, 3052, n. 5 (2014)); *City of Schenectady*, 46 PERB ¶ 3025, 3056, at n. 8 (2013), *confd sub nom Matter of City of Schenectady v NYS Pub Empl Relations Bd*, 47 PERB ¶ 7004 (Sup Ct Albany Co 2014), *affd*, 136 AD3d 1086 (3d Dept 2016); *Town of Orangetown*, 40 PERB ¶3008 (2007), *confd sub nom Matter of Town of Orangetown v NYS Pub Empl Relations Bd*, 40 PERB ¶ 7008 (Sup Ct Albany Co 2007); *Town of Wallkill*, 42 PERB ¶ 3006 (2009). Likewise, Burke has not excepted to the ALJ's denial of his motion to dismiss the NYCTA's answer as untimely, on the ground that the late filing was a result of attorney error and did not prejudice Burke. Any such exception has been waived and is not properly before us. *Id.*

Burke is a 14-year employee of NYCTA, working most of that time as a train operator. He is also a Transit Workers Union, Local 100 (TWU) shop steward. In April 2014 he was demoted to station-agent trainee as the result of alleged safety violations.[5]

Burke had filed improper practice charges against NYCTA in 2007 and in February 2014. On March 20, 2015, he also filed a federal lawsuit against NYCTA seeking back pay and unspecified damages.

In his current improper practice charge, Burke claims retaliation by NYCTA for his prior improper practice proceedings.[6] He asserts that the retaliation came in the form of a derogatory article in the *New York Post* and NYCTA's withholding of pay and benefits "in an attempt to drive this whistleblower into poverty." He also claims that "unknown supervision and management" referred to him at a learning center as a "Train Kook."

The March 29, 2015 *Post* article, attached to Burke's charge, is headlined: "'Satanic MTA out to kill' Train kook's claim." It begins, "It's the D train, as in devil." The article reports that Burke filed a lawsuit in federal court against NYCTA that accuses NYCTA of engaging in "satanic terroristic criminality" by sending bosses to "terrorize" and "assault" him. According to the article, Burke alleged in his lawsuit that NYCTA has intended to "endanger every soul on the train and on the track" when, in April 2014, its inspector "entered his train to see whether he was wearing corrective lenses." The article further reports that Burke explained that the electricity on the tracks and the weight of trains create an "infinite way to be murdered or suicided" [*sic*]. It quotes Burke's lawsuit as stating that he believes he may be in "mortal danger" and that his employer "may be more dangerous" than "the mob." The article reports: "Transit sources say his previous wacky claims have been shot down by courts or the Public Employee [sic] Relations Board." Finally, the article reports that Burke has called NYCTA "the Invisible Empire" and likened it to the "KKK."

---

[5] NYCTA inspectors allegedly entered his train to check if he was wearing corrective lenses. The visit was reportedly prompted by Burke's refusal to remove tinted glasses at a 2014 PERB hearing.

[6] He also claims "direct violation of NYCTA Department of Law policy and NYCTA Rules," both of which are beyond our jurisdiction.

At no point does the article identify any of its sources. However, Burke told the ALJ at the pre-hearing conference that he was contacted by a reporter before the article was published and spoke to that person for 27 minutes. The ALJ surmised that the *Post* obtained its material from reviewing Burke's federal complaint. There is no basis to conclude that NYCTA had anything to do with the publication of the article.

According to Burke, the article caused him to suffer a "panic attack." He alleges that as a result of his panic attack, he has been out of work on Worker's Compensation since the publication of the article. Burke claims that NYCTA is challenging his entitlement to Workers Compensation benefits. He further claims that the author of the article violated his civil rights and retaliated against him for his prior PERB cases "and other whistleblowing activity."[7] Burke also contends that NYCTA "published" the piece in the *Post* and distributed it online.

---

[7] This was Burke's statement at the PERB conference when he was asked to explain the basis for his charge.

In specifying who within NYCTA he believed was responsible for the article, he pointed to attorney Kristen Nolan, who handled the 2007 PERB case, which was settled, and is the attorney assigned to the present charge. In an October 19, 2015 letter to the ALJ, Burke opined:

> The charges against the Respondent are clear, that in retaliation for protected activity by the Charging Party, one or more attorneys at the NYCTA Department of Law, presumably Ms. Nolan, gave false information to the *New York Post* characterizing Respondent as a "Train kook" etc.[8]

In his charge, however, Burke states outright that Nolan "wrote and/or had published a false malicious slanderous defamatory hit piece." He also asserts that it was "disseminated at the workplace, online at MTA Today Facebook and throughout the Transit system" without identifying by whom. He said that his supervisor brought a copy of the article to him and that "apparently someone from the supervisor's office posted it." An amendment to the charge, in response to a deficiency notice, however, asserts that Nolan was responsible for the article's distribution online and at NYCTA's work sites. No basis for that conclusion is provided.

Burke's theory of the case is further confused by reference in his October 19, 2015 letter to the ALJ, stating:

> The *New York Post*, in their motion to dismiss, acknowledged that it was a NYCTA attorney who gave the what they acknowledge now is false information [*sic*].[9]

However, the only motion to dismiss that is pending before PERB is that filed by NYCTA; the *New York Post* is not a party to the instant proceeding. This was pointed out to Burke in a letter from the ALJ dated October 26, 2015, to which he did not respond. No papers from another legal action involving the newspaper have been presented.

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[8] Response to Exceptions, Ex F.
[9] *Id.*

As for Burke's claim of NYCTA's retaliatory withholding of his wages and benefits, no information was presented to the ALJ other than a statement of the amounts that were allegedly withheld and his conclusory assertion that the withholding was "in retaliation and a successful attempt to drive this whistle-blower into poverty."[10] It appears from the papers that the wages and benefits were stopped pending the outcome of the Worker's Compensation claim that NYCTA appears to be contesting.

DISCUSSION

The ALJ accurately recounted Burke's allegations and the basis for his claim that NYCTA violated §§ 209-a.1 (a) and (c). Moreover, although there is no written documentation of the discussion at the pre-hearing conference on which the ALJ relied, Burke's exceptions are not inconsistent with the ALJ's recitation of those discussions.

In *UFT (Jenkins)*,[11] the Board reaffirmed the settled test applicable to a charge such as this.

> It is well-established that a charging party in an improper practice charge alleging unlawfully motivated interference or discrimination in violation of §§ 209-a.1(a) and (c) of the Act has the burden of proof to demonstrate by a preponderance of evidence that: a) the affected individual engaged in protected activity under the Act; b) such activity was known

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[10] Burke's letter to the ALJ dated October 19, 2015. In his brief in opposition to the motion, Burke also cites, at p. 2, the "Wage Theft Prevention Act Section 195 of the NYS Labor Law." The ALJ correctly observed that our jurisdiction extends only to the Act, and not to any statute other than the Act.

[11] 41 PERB ¶ 3007 (2008), *confirmed sub nom. Jenkins v. New York State Pub Empl Relations Bd*, 41 PERB ¶ 7007 (Sup Ct NY County 2008).

> to the person or persons taking the employment action; and c) the employment action would not have been taken "but for" the protected activity.[12]

There, the Board emphasized that proof of a *prima facie* case of improperly motivated action can be established with direct or circumstantial evidence, observing:

> At minimum, the circumstantial evidence necessary to prove a prima facie case must be sufficient to give rise to an inference that unlawfully motivated interference or discrimination was a factor in the employer's conduct. This relatively low initial evidentiary threshold for establishing a prima facie case in circumstantial evidence cases is necessitated by the principles underlying §§ 209-a.1(a) and (c) of the Act along with the lack of discovery and the pleading requirements under our Rules of Procedure (Rules). Although the timing and the context of events alone in a circumstantial evidence case may not be sufficient to meet a charging party's ultimate burden of proof, the timing and context of an employer's conduct may be sufficient to establish an inference of improper motivation, thereby shifting the burden of persuasion to the respondent to come forward with evidence demonstrating a non-discriminatory basis for the alleged conduct.[13]

Here, we find that the facts alleged in Burke's improper practice charge, as amended, and clarified at the pre-hearing conference, and augmented by his offer of proof, do not make out a circumstantial *prima facie* case of a violation of §§ 209-a.1 (a) or (c) of the Act. At its heart, the charge and offer of proof complain of the article published in the *New York Post*. Burke's offer of proof and his allegations are devoid of any basis upon which a reasonable inference can be drawn that NYCTA was responsible for that publication. Moreover, there is nothing in any of Burke's pleadings that tends to establish that NYCTA retaliated against Burke by withholding wages and benefits because he filed his two prior improper practice charges. Based on the pleadings before us, we agree with the ALJ that the simple allegation that the withholding of Burke's wages and benefits followed the filing of his prior charges is an insufficient basis to require NYCTA to come forward with a defense to the charge.[14]

---

[12] 41 PERB ¶ 3007 at 3043.
[13] *Id.*

Accordingly, we affirm the decision of the ALJ and dismiss Burke's improper practice charge.

DATED: July 13, 2016
Albany, New York

John F. Wirenius, Chairperson

Allen C. DeMarco, Member

Robert S. Hite, Member

[14] *See, eg, State of New York (SUNY Buffalo)*, 33 PERB ¶ 3020 (2000).

Exhibit H

THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION

In the Matter of the Appeal of
BRIAN BURKE
Appellant

-against-

TRANSIT AUTHORITY
Respondent

Pursuant to Section 76 of the New York State Civil Service Law

CSC Index No: 2016-0925

DECISION

BRIAN BURKE ("Appellant") appealed from a May 5, 2016 determination by the Transit Authority ("TA") terminating him from his position as a probationary Station Agent.

Appellant filed an appeal with the NYC Civil Service Commission ("Commission") on October 21, 2016, in which he represented that he accepted a reclassification from Train Operator to Station Agent with the understanding that there would be no probationary period. Appellant also argued that, according to NYC Personnel Rules and Regulations ("PRR") Sec. 5.2, he should have been restored to his former civil service title of Train Operator if he did not pass his probationary period as a Station Agent.

The Commission issued an interim order to the TA on October 21, 2016, directing the agency to clarify Appellant's employment status, including whether he was probationary in his civil service title, when he was terminated on May 5, 2016. The Commission also directed TA to submit legal argument as to whether the Commission has jurisdiction under Civil Service Law ("CSL") Sec. 76 to hear Appellant's appeal.

TA submitted its response on December 1, 2016, affirming that Appellant was probationary in the title of Station Agent at the time of his termination. The TA stated that although Appellant was hired as a Train Operator in February 2001, he went on disability leave in April 2014 and did not return to work until March 2015, at which time he asked to be reclassified to Station Agent. The TA granted his request and Appellant began his mandatory one-year probationary period as a Station Agent on March 23, 2015. On April 6, 2015, nine days later, Appellant left work claiming an "injury on duty" and never returned. Thirteen months later, the TA terminated Appellant's employment for unsatisfactory attendance during his probation.

On December 5, 2016, Appellant responded to the TA's submission, arguing that he agreed to be reclassified on the understanding that he would be permanent in the title of Station Agent, but admitted that he has "no documents, at this time, which affirmatively show" that he was a permanent employee in that title. However, Appellant also asserted that he had agreed to be placed on probation in the new title but had not been informed that any absences would extend that probationary period.

On December 6, 2016, the Commission requested either party to submit the written document that informed Appellant that he was being reclassified as a Station Agent. The TA submitted a two-page document titled "Reclassification Consideration Request due to Disability." The first page, dated March 11, 2015, informed Appellant that he was being offered a position as a Station Agent. The second page, dated March 13, 2015, informed Appellant that in order to be reclassified he "will be required to resign from [his] present title [and that he] will be *required to serve a probationary period of one year in the new title, subject to automatic extension for absences*." (Emphasis added.) Appellant signed and dated both pages. The second page also bears the signature of a witness, presumably to Appellant's receipt of and signature on the document.[1]

The Commission finds that the record supports the conclusion that Appellant agreed to be reclassified knowing that he would be returned to probationary status in the new position and that any absences would extend the probationary period. The Commission therefore finds that Appellant was a probationary employee when he was terminated.

Probationary employees have no rights under CSL Sec. 75 and, consequently, no right to appeal a disciplinary action to the Commission. It is well-settled that "probationary employees had no property rights in their positions and could be discharged without a hearing and without a stated specific reason." *Dozier v. New York City*, 130 A.D.2d 128, 139. Further, CSL Sec. 76 "solely authorizes the Commission to hear appeals from hearings in connection with disciplinary proceedings under section 75." *Johnson v. Triborough Bridge & Tunnel Auth.*, 97 N.Y.2d 627, 629 (2001) (*citing Matter of Montella v Bratton,* 93 NY2d 424, 426).

Therefore, based upon the law and facts as stated above, the Commission lacks jurisdiction to consider this appeal and it is hereby dismissed, and the TA's termination of Appellant's employment during his probationary period remains unchanged.

SO ORDERED

Dated: 1/6/2017

[1] Although the witness's name is unreadable, the Commission accepts that the document was witnessed. On December 9, 2016, the TA submitted a color copy of the document along with an affidavit from its Chief Officer, Human Resources, attesting that the document was signed and witnessed on March 13, 2015, and maintained as a business record. Appellant responded the same day reiterating that he did not sign the March 13, 2015 document.

Exhibit I

S61

STATE OF NEW YORK

WORKERS' COMPENSATION BOARD

PLACE OF HEARING	PART	DATE OF HEARING	TIME	DC CASE NO.
215 W. 125th Street, 4th Floor New York, NY 10027	28	06/24/2016	9:30AM	XXX-XX-7490
Date of this Notice 06/03/16	Complaint Filed Date 04/08/2016		District Office: Brooklyn	

Claimant
Brian Thomas Burke
145 East 23rd Street, Apt. 4R
New York, NY 10010
USA

Employer √
New York City Transit Authority
130 Livingston Street, Room 1031
Brooklyn, NY 11201
USA

WC or DB Reference Case No.

NOTICE OF HEARING

RE: DISCHARGE OR DISCRIMINATION COMPLAINT

TO EMPLOYER AND EMPLOYEE

CAREFULLY FOLLOW INSTRUCTIONS LISTED BELOW:

The Employer,Employee or other parties must be present at this PRELIMINARY HEARING.
You must be prepared to furnish in full detail, the names and addresses of all WITNESSES on whose testimony you will rely to prove your case.
You must be prepared to furnish a day and time when your witnesses can attend a hearing.
You should NOT produce WITNESS at this time.

THERE WILL BE NO ADJOURNMENT EXCEPT FOR GOOD AND SUFFICIENT CAUSE

IMPORTANT

1. BRING THIS NOTICE WITH YOU.
2. ALL INQUIRIES AND DOCUMENTS REGARDING THIS COMPLAINT SHOULD INCLUDE THE DC CASE NUMBER.
3. THE EMPLOYER ALONE AND NOT HIS/HER CARRIER SHALL BE LIABLE FOR ANY PENALTIES AND PAYMENTS REQUIRED

ATENCION EMPLEADOS Y PATRONOS
Si no sabe Ingles, puede llamar a nuestra oficina de informacion para asistencia.

MTA NYC TRANSIT
RECEIVED
2016 JUN 13 P 3:36
LAW DEPARTMENT
TORT - NO FAULT

PURPOSE OF HEARING

Consideration of complaint under Section 120.

THE WORKERS' COMPENSATION BOARD EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION AND ASSURES HEARING LOCATIONS ACCESSIBLE TO THE DISABLED. CONTACT THE NEAREST BOARD OFFICE IF YOU HAVE SPECIAL ACCESSIBILITY NEEDS.

SECOND REQUEST

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
111 Livingston Street - Room 2317 - DC Unit
BROOKLYN, NY 11201

THIS AGENCY EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION.

NYC TRANSIT RECEIVED
2016 MAY 12 A 9:15

NOTICE TO EMPLOYER AND REQUEST FOR INFORMATION REGARDING DISCHARGE OR DISCRIMINATION COMPLAINT

New York City Transit Authority
130 Livingston Street, Room 1031
Brooklyn , NY 11201

Date: 05/06/2016

☐ Disability Benefits (Off-The-Job Disability)

☐ Workers' Compensation (On-The-Job Injury)

Employee's Name	Social Security No.	WCB Case No.
Brian Thomas Burke	XXX-XX-7490	

Attached is a copy of a complaint by the above-named employee, who alleges a violation of Section 120 of the Workers' Compensation Law or Section 241 of the Disability Benefits Law (See reverse for the applicable law). A hearing will be scheduled before a W.C. Law Judge at the hearing point nearest the employee's residence. At that time all parties will have an opportunity to be heard. You will receive a notice indicating the date, place and time of such hearing.

Please note the provisions of section 111 of the Workers' Compensation Law (quoted on the reverse), and enter all information requested below and on the reverse. Return this notice within thirty days to the Discrimination Unit at the above address.

IT IS IMPORTANT THAT YOU COMPLETE AND RETURN THIS FORM WITHIN THIRTY DAYS AND THAT YOU ATTEND ALL HEARINGS RELATED TO THIS MATTER. THE EMPLOYER ALONE AND NOT HIS/HER INSURANCE CARRIER SHALL BE LIABLE FOR ANY PENALTIES AND PAYMENTS ORDERED.

Robert E. Beloten
Chair

By ______________________
Discrimination Unit

EMPLOYER'S STATEMENT

In accordance with Section 111, you are requested to enter all information requested below and on the reverse and sign the affirmation.

PLEASE PRINT OR TYPE

1. Full and Correct Legal Name of Employer ______________________

2. Address ______________________ Tel No. ______________________
(No. and Street) (City) (State) (Zip Code) (Area Code and Number)

3. Is business operated by an individual owner, partnership or corporation?

☐ Individual owner - Enter name and address of owner. ☐ Partnership - Enter name and address of each partner.

☐ Corporation - Enter name, title and address of president and/or other corporate officer to whom notice should be sent:

Name ______________________ Name ______________________

Address ______________________ Address ______________________

DC-130 (12-09)

(SEE REVERSE SIDE)

COI :TE STATEMENT AND SIGN AFFIRMATION BEL(

4. You may present below any defenses or comments with respect to the attached complaint.

____

(Attach additional sheets if necessary)

The undersigned hereby affirms, under penalties of perjury, that he/she is

______________________ of ______________________

and that the foregoing statements are true. Date____________ Signature____________________

NOTE: If copies of notices should be sent to the attention of a particular person, indicate name, title and address below:

____

____

WORKERS' COMPENSATION LAW

Sec. 120. Discrimination against employees who bring proceedings. It shall be unlawful for any employer or his or her duly authorized agent to discharge or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon finding that an employer has violated this section, the board shall make an order that any employee so discriminated against shall be restored to employment or otherwise restored to the position or privileges he or she would have had but for the discrimination and shall be compensated by his or her employer for any loss of compensation arising out of such discrimination together with such fees or allowances for services rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a penalty of not less than one hundred dollars or more than five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury and be applicable to the expenses of administering this chapter. All penalties,compensation and fee or allowances shall be paid solely by the employer. The employer alone and not its carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liablity for such penalties and payments shall be void.

An employer found to be in violation of this section and the aggrieved employee must report to the board as to the manner of the employer's compliance within thiry days of receipt of a final determination. In case of failure to report on compliance, or failure to comply with an order or penalty of the board within thirty days after the order or notice of penalty is served, except where timely application to the board for a modification, rescission or review of such order of penalty has been filed under section twenty three of this chapter, the Chair in any such case or, on the Chair's consent, any party may enforce the order or penalty in a manner as an award of compensation.

Sec. 241. Application of other provisions of chapter. All the power and duties conferred or imposed upon the Chair and board by this chapter that are necessary for the administration of this article and not inconsistent are, to that extent, hereby made applicable to this article; and none of the other provisions of this chapter pertaining to benefits provided by other articles of this chapter shall be construed to be applicable to this article. The provisions of section one hundred twenty of this chapter shall be applicable as fully as if set in this article, except that penalties paid into the state treasury pursuant thereto under this article shall be applied toward the expenses of administering this article.

Sec. 111. Information to be furnished by employer. Every employer shall furnish the Chair, upon request, any information required by him\her to carry out the provisions of this chapter. The Chair or board may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the Chair a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be subscribed by the employer or the employee and affirmed as true under the penalties of perjury and returned to the Chair within the period fixed by the Chair therefor.

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
Discrimination Unit
111 Livingston Street - Room 2317
Brooklyn, NY 11201 718-802-6931

THIS AGENCY EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION.

DISCHARGE OR DISCRIMINATION COMPLAINT

(See Reverse Side for Applicable Law)

TYPE OF BENEFIT CLAIM

☐ Disability Benefits (Off-the-Job Disability)

☒ Workers' Compensation (On-the-Job Injury)

Social Security No. ____________

WCB Case No. G1278038, G1100520, etc. (For On-the-Job Injury)

PLEASE PRINT OR TYPE. ANSWER ALL QUESTIONS - FAILURE TO DO SO MAY DELAY PROCESSING OF YOUR COMPLAINT ANSWER QUESTIONS 6 AND 7 IN DETAIL - ATTACH ADDITIONAL SHEETS IF NECESSARY

SUBMIT IN DUPLICATE TO THE ADDRESS AT THE TOP OF THIS FORM.

1. Employee's Name Brian (First Name) Thomas (Middle Name) Burke (Family Name)
2. Address 145 East 23rd Street apt. 4R New York, NY 10010
3. Employer's Name New York City Transit Authority
4. Employer's Address 130 Livingston Street Brooklyn NY 11201
5. Were you discharged? Yes, constructively If "yes", give date April 6, 2015 & April 17, 2014
6. State in detail the basis for your complaint, the reason you were dismissed, and the name of your supervisor, manager or other person who actually dismissed you. On April 14 & 15 2014 I was serially attacked by 5 or more TSS while operating trains as orchestrated by management for filing previous wc claims. In 2015 I was brutally defamed and have had over 20 thousand in wages unlawfully withheld.
7. State the name(s) of others involved. Attach copy of your dismissal notice, if any, or other documents received. Ms. Kristen Nolan, esq. NYCTA Department of Law Attorney is the prime actor. Director of Labor Relations Leonard Akselrod also ordered the assaults and withholding of wages.
8. Where did you work? (Indicate address, if different than item 4 above). Various locations within NYCTA.
9. Occupation Train Operator 14 years & medically reclassified Station Agent as Retaliation.
10. Name and address of your attorney or representative, if any: (see statement "On Representation" on reverse). Pro Se Brian Burke 145 East 23rd Street apt. 4R New York, NY 10010
11. Date of accident or first day of disability April 17, 2014 and April 6, 2015

I AFFIRM UNDER PENALTY OF PERJURY THAT THE INFORMATION PROVIDED HEREIN IS TRUE:

Employee's Signature	Date	Telephone Number
[signature]	February 18, 2016	646-434-8513

GENERAL AFFIDAVIT

As a resident in the county New York within the state of New York, Brian Burke personally approached me, the undersigned Notary, and made his sworn testimony in a general affidavit, that the following statement is completely factual and true to the best of his belief and knowledge.

Statement:

Under Penalty of Perjury; the Affiant, Brian Burke ________________ hereby states that the forgoing is true and correct: On September 22, 2007, while operating a train on the L line, Affiant sustained a severe electrical burn to his right hand and thumb caused by NYCTA equipment. This established Workers Compensation case No. 00742282. Affiant missed 3 months of work, and that case was not controverted, settled and closed. On August 22 2009, while ordered to climb up the side of a refuse train car in order to release a signal, an injury was sustained to the right hand and wrist. An Injury On Duty form was filled out and physical therapy for the injury was undergone. Workers Compensation case G0183772 is still open. Since reporting these injuries waves of Retaliation and Harassment orchestrated by NYCTA supervisors, managers and attorneys ensued until present. 1) Train Service Supervisor LoBianco would in 2008 on a monthly basis harass, insult and interfere with safe train operation. A PERB case was filed and this harassment and retaliation for filing a WC claim eventually stopped. 2) In 2011 and 2012 NYCTA began assigning Affiant less senior, more difficult road jobs as adverse job actions in order to retaliate against Affiant for filing Workers Compensation claims. Affiant was required to pick a less advantageous job in order to end this harassment and retaliation. 3) Immediately on starting this new road job, December 2012, Affiant was daily harassed by ATD Odums. An additional PERB and NYS Human rights case was filed. Affiant was again required to again pick a less advantageous job in order to end hostile workplace activity. Three Perjurious "affidavits" were submitted by Ms. Nolan. 4) On April 14 and 15 2014, NYCTA Attorney Kristen Nolan, with the assistance of Labor Relations Director Leonard Akselrod, orchestrated and unleashed a campaign of terror against Affiant by sending waves of Train Service Supervisors to assault, harass and interfere with safe train operation while trains were in motion over those two days. A proximately caused injury ensued. New Workers Compensation case G1100520, was filed. 5) In said case, NYCTA Suborned Perjury in order to prevail. For example, a TSS correctly testified he was standing three inches away during his attack and was then ordered by NYCTA Counsel to change it to the impossible 'three feet' perjury. 6) On returning to work in March 2015, now as a Station Agent due to those malicious acts by NYCTA, Ms. Nolan brutally defamed and harassed Affiant in a false damaging article published in the NY Post on March 29, 2015 and online. This violated Transit Policy and NYS Laws, including WCL § 120. For a week the false defamatory article was posted and distributed in Claimant's workplace at NYCTA Learning Center in Brooklyn. An additional proximately caused injury ensued and Workers Compensation case # G1278038 was filed. On appearing before the same WC Administrative Law Judge, Patricia Harris, Affiant/Claimant was adjudicated the prevailing party. Given that it was now more difficult for NYCTA to hide their orchestrated harassment of Claimant or Suborn additional Perjury Judge Harris could now see the obvious ongoing criminality of NYCTA. In the previous WC case G1100520 the three TSS's who testified actually testilied, in order to save their jobs and other consideration. If they told the truth they would have been immediately terminated. The reason the harassing actors chose an operating cab of a subway train in motion in order to commit assaults and retaliation for filing WC cases is that there can be no witnesses or the use of any 'electronic devices' i.e. recording equipment. 5) In case G1278038 NYCTA again attempted Employer WC Fraud by claiming to administrators that this case was a 'duplicate file'. Like with the Perjury NYCTA knew this to be false and an unlawful attempt to deny benefits. The case was temporarily closed as a result of their fraud. 6) NYCTA has acknowledged in PERB case U-34459, which is before that Board, that lawfully earned wages constituting over 21K has been criminally withheld due to the filing of G1270838. This constitutes unlawful Constructive Termination, especially when considered with the ongoing pattern of harassment and hostile workplace. Affiant Requests the WCB take Judicial Notice of U-34459. Transit has acknowledged that their criminal harassment of and retaliation against this Civil Servant has been and is for the Protected Activity of filing legitimate Workers Compensation claims, wherein the injuries themselves have been substantiated by a WC ALJ as being caused by orchestrated deliberate adverse job actions/criminal harassments by NYCTA.

Affiant Signature: [signature]

Date Signed: the 15 of March 2016

Sworn and subscribed to before me on this day, 15 of March 2016

[signature]

Notary Public

NEIL SCH[illegible]
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. [illegible]065135
Qualified in Queens County
Commission Expires October 9, 2017

AMENDED CERTIFICATION OF SERVICE

I, Daniel Chiu, hereby certify that:

On March 6, 2017, I served the annexed Declaration in Support of Motion to Dismiss by causing a true and correct copy, to be deposited into the custody of United States Postal Service, in an enclosed envelope with sufficient postage for first-class mail addressed to:

BRIAN BURKE, *pro se*
145 East 23rd Street, Apt. 4R
New York, New York 10010

I certify under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
April 20, 2017

Daniel Chiu